CONFIRMATION OF FEDERAL JUDGES

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

THE SELECTION AND CONFIRMATION OF FEDERAL JUDGES

JULY 14 AND 28, SEPTEMBER 15, OCTOBER 6 AND 22, 1981

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CONFIRMATION HEARING ON: WILLIAM W. WILKINS, JR., AND WILLIAM C. LEE

TUESDAY, JULY 14, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:30 p.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Also present: Judge Walter Cox, South Carolina; Judge Ross Anderson, South Carolina; Tony Campbell, Esq., Greenville, S.C.; Charles Evans, Greenville, S.C.; Maureen McGregor, South Carolina; and Bill Robertson, president, South Carolina Trial Lawyers Association.

Staff present: Duke Short, chief investigator; Allan Spence, investigator; Bob Newman, investigator; and Pamela K. Swanner, clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

This hearing is on the nomination of William W. Wilkins, Jr., for the position of U.S. district judge for the District of South Carolina.

I am pleased today to introduce to the Judiciary Committee an impressive and capable attorney from South Carolina, Mr. William W. Wilkins, Jr.

Mr. Wilkins, would you come up here and be seated?

Senator Hollings, would you join him there, too?

Mr. Wilkins has been appointed a Federal district judge in South Carolina. He brings strong qualifications and great promise to the Federal Bench. I have known Mr. Wilkins for many years and have no hesitation in attesting to his credentials.

Mr. Wilkins is a native of Greenville, S.C., a graduate of Davidson College, and an honors graduate of the University of South Carolina School of Law.

While in law school, he served as editor-in-chief of the South Carolina Law Quarterly, captain of the South Carolina Moot Court team, member of the Order of Wig and Robe Academic Honor Society, and he was named the Outstanding Graduate for the Year 1967 by the law school faculty.

After graduating from law school, Mr. Wilkins served 2 years in the U.S. Army. He has since attained the rank of lieutenant colonel in the Army Reserve.

He was selected as law clerk to the former chief judge of the fourth circuit court of appeals, the Honorable Clement F. Haynsworth, Jr.

In 1970, I appointed Mr. Wilkins as my legislative aide, and I might add that he did an excellent job serving in that capacity. He thereafter returned to Greenville and entered the practice of law.

In 1975, Mr. Wilkins was sworn in as solicitor for the 13th judicial circuit, the first Republican solicitor in the history of the State of South Carolina in the last 100 years. At that time, he was the youngest chief prosecutor ever elected in the State of South Carolina. He was reelected in 1978 and at present serves in that capacity.

It should be noted that Mr. Wilkins's office handles more cases than any solicitor's office in the State and at the same time has the highest total conviction rate.

During his work as solicitor, he created the first victim witness assistance unit in the State of South Carolina. This unit deals with the special problems of victims and witnesses of crime.

Mr. Wilkins also created the first pretrial diversion program in our State, which is proving to be a meaningful alternative to the traditional justice system.

I will not attempt to name all of the numerous awards Mr. Wilkins has received nor the many organizations he has served. I do think it important, however, to note that he serves on the Governor's Advisory Committee on Criminal Justice, Crime, and Delinquency. He was first appointed to this position by former Governor James B. Edwards and then reappointed by Gov. Richard W. Riley.

He was also recently appointed by the South Carolina Supreme Court to the Committee on Sentencing Guidelines.

Mr. Wilkins has been admitted to practice before the U.S. Supreme Court, South Carolina Supreme Court, and the U.S. Court of Appeals for the Fourth Circuit, and the Federal district courts in the State of South Carolina.

He is a member of the American Bar Association, the South Carolina Bar Association, South Carolina Trial Lawyers Association, and the National District Attorneys Association.

Mr. Wilkins has broad experience and is widely respected in his profession and in the community at large. He is a man of unquestionable integrity and ability, and I am confident he will make an outstanding Federal judge.

It is my privilege to recommend Mr. Wilkins to the President for this position, and I wholeheartedly support his nomination.

Senator Hollings, my distinguished colleague, is here, and I am sure he has some favorable remarks to make about this appointee.

STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. I certainly have, Mr. CHAIRMAN. I thank you very much, and I would ask consent that I just include my statement in the record.

The CHAIRMAN. Without objection, the entire statement will be put in the record after your prepared remarks.

Senator HOLLINGS. I would emphasize only two things. The distinguished chairman has covered the record very thoroughly. On the one hand, Mr. Wilkins has served as the clerk for the chief judge of our fourth judicial circuit, Judge Clement Haynsworth—who was our recommendation to President Nixon for the U.S. Supreme Court.

While we lost that by five votes, I have had over five of those who voted in the negative at the particular time say they wish they had a chance to revote. They would change their mind. It was a mistake to defeat the nomination, and they certainly now would support Judge Haynsworth for the Supreme Court.

So the gentleman before the committee has a very deep experience already with the Federal law. I think the salient feature, though, is that at 39 years of age he appeared on a panel of nominees selected by a merit selection panel that we had about 2½ years ago in South Carolina to propose qualified nominees for the Bench.

It took quite a bit of time, judgment, and deliberation in getting a cross section of outstanding jurists; business leaders; women; blacks; to serve on the panel.

In the names that were submitted—some 11 names at that particular time for 3 vacancies—Billy Wilkins was right at the top of that particular list, so he has been in the minds, in a bipartisan way, of all of us, and I commend you for your selection of him to the Federal judiciary, and I am glad to support his nomination.

I think we have another outstanding young jurist in our audience here, Judge Walter Cox of our State circuit court; and we have an outstanding member of that particular merit selection panel at the time, Judge Ross Anderson, who, on a further occasion, was selected by another panel and myself and is now serving on the Federal district court. I think Judge Anderson is in our audience this afternoon, along with Judge Cox.

There is just widespread support. I have never heard, frankly, a negative comment on Billy Wilkins, so I commend you and commend him, and I am glad to support his confirmation and look forward to his, what I know will be, outstanding service on our Federal judiciary.

The CHAIRMAN. Thank you very much, Senator Hollings.

[The prepared statement of Senator Hollings follows:]

STATEMENT OF SENATOR ERNEST F. HOLLINGS

Mr. Chairman and members of the committee, I am pleased to have this opportunity to appear in support of the nomination of William W. Wilkins, Jr., for the district court of South Carolina. My senior colleague has done a fine job of introducting Mr. Wilkins and stating his very outstanding record so I will not go into great detail on that score. Aside from the particulars included on the brief background sheet that I ask be made a part of the record, I think it is important to point out to the committee that Mr. Wilkins has pursued a great variety of activities and has accomplished them successfully and very capably. His record as a law student and law clerk, incidentally, I must point out, clerking for one of the most outstanding jurists in our nation, the Honorable Clement Haynsworth, U.S. Court of Appeals for the Fourth Circuit, a practitioner and elected Solicitor for the Thirteenth Judicial Circuit of South Carolina all point this out. He is active in his community, serves as a Lt. Colonel in the U.S. Army Reserves and he is married and the father of three children. And I might point out he has achieved this record of accomplishment and dedication all before turning the age of forty.

Mr. Wilkins is widely known and respected as a fair, just, and even-handed man. His appointment is based upon merit and qualification. I might note here that his name appeared on the list of those deemed qualified for nomination to the bench by the selection commission which was assembled to process the applications for the three newly created judgeships for South Carolina in 1979. I am confident that the attorneys who practice before the district court of South Carolina will appreciate his experience, his knowledge of the law, and his temperament.

I am pleased to endorse Billy Wilkins for this very important position and wholeheartedly urge the committee to approve his nomination.

The CHAIRMAN. I might add that, in addition to the information I related about Solicitor Wilkins, he also served as law instructor to Greenville Technical College, part time.

So he has been a practicing lawyer, he has been a solicitor, he has been on the staff of a Senator, and he has been a law teacher.

Mr. Wilkins, I want to welcome you here and say what a great pleasure it is to witness your confirmation here in the Senate.

I have been hoping for a number of years that we would have the opportunity to submit your name as appointment as a Federal judge as I know of no man anywhere in my State who is better qualified by capacity, character, professional qualifications, judicial temperament, and I feel we are very fortunate to have a man like you go on the Federal Bench.

Before asking you some questions, I notice you have your lovely wife here. You may wish to have her stand up. I see Mrs. Wilkins back there.

Mrs. Wilkins, would you stand up?

I just want to say, we are glad to have you here.

Is any other member of your family here, Mr. Wilkins?

Mr. WILKINS. No, Senator.

The CHAIRMAN. Senator Hollings, we would be delighted to have you stay if you can. If you cannot, I know how busy you are, so feel free to leave at any time.

Senator HOLLINGS. Well, I would appreciate it if the record would show that Mr. Wilkins has his lawyer here, the distinguished chairman. [Laughter.]

Senator HOLLINGS. Thank you, Mr. CHAIRMAN.

The CHAIRMAN. I believe this is the first appointment by the President of a Federal judge that has been sent to the Hill, and it is the first hearing we have had on a Federal judge.

I have a few questions that I might propound to you, Mr. Wilkins.

Do you feel that there is a need for judges to assume direct control of complex issues and complex cases in order to avoid delays and effectively manage such cases?

TESTIMONY OF WILLIAM W. WILKINS, JR., NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF SOUTH CAROLINA

Mr. WILKINS. Senator, your question addresses two points:

First, with regard to complex issues, I believe that a judge should decide a case based upon a particular and specific factual situation, and I do not think that judges are capable, either by experience or certainly by time because of the heavy workload of our Federal courts, to take an administrative role over any State or Federal institution.

As far as complex cases are concerned, I think a judge should take control of complex cases, particularly multidistrict litigation cases, in order to best utilize the resources of our Federal courts and to save time and money.

The CHAIRMAN. Mr. Wilkins, what recommendations do you have for improvements in the Federal judicial system?

Mr. WILKINS. I do not know any specific thing that a Federal judge as an individual can do to improve the overall Federal judicial system, Senator. That must come from the Congress by way of legislation.

I do feel, however, that each individual judge can make improvements and better our system by individual efforts and by hard work and making an honest effort to keep the dockets clean both from the civil and criminal sides and to provide a forum for all citizens in our country to come and receive speedy, efficient, and effective justice.

The CHAIRMAN. How do you feel about the Judicial Tenure Act or any procedures set up where Federal judges can be reviewed as to their demeanor, good behavior, and standards after they are confirmed by the Senate?

Mr. WILKINS. I think perhaps it is a good idea to have some type of procedure whereby periodic reviews can be had. I have no objection and would have none to any panel or legitimate commission authorized by the Congress to review my conduct as a member of the Federal judiciary.

The CHAIRMAN. Mr. Wilkins, what will you do as a U.S. Federal district judge to familiarize yourself and be prepared to take the heavy criminal caseload which is probably waiting for you?

Mr. WILKINS. A judge must continue to study the law, both the civil and criminal areas. I might add, Senator, as you well know, I feel particularly qualified in this field because for the past 6 years I have been the chief prosecuting attorney for the 13th judicial circuit in South Carolina and in that capacity this year alone was responsible for overseeing the prosecution of over 5,000 cases in our circuit ranging in cases from murder to burglary, criminal sexual conduct, white collar crimes, and a variety of other statutory and common law violations.

The CHAIRMAN. In May of this year, the Washington Post reported that the court of appeals for the State of New York struck down the conviction of a man who sold films involving naked children performing sexual acts. The films were sold to an undercover New York City policeman.

The Post article is quoted as saying: "To be deemed illegal, the court said, in effect, child pornography must be declared obscene by community standards. 'Depicting naked children, even engaging in sexual acts, does not necessarily make a movie obscene,' the court said."

I am greatly concerned over the increased use of young children in pornographic and sexually exploitive material, and as chairman of the Judiciary Committee I have instructed the chief investigator of the committee to thoroughly examine this subject.

It is my present intention to hold hearings on the subject of child pornography at a date in the near future.

Mr. Wilkins, would you give me your views on the laws relating to child pornography?

Mr. WILKINS. First of all, Senator, I share your concern about the distribution of pornography in our communities and particularly the sexual exploitation of children.

The first amendment to our Constitution is a basic right and one that must be defended. However, it is not an amendment without limitation.

I do not believe that the first amendment protects the distribution of hardcore pornography, and the Federal Government as well as our State governments have a legitimate interest in prohibiting this type of activity.

The CHAIRMAN. Mr. Wilkins, I forgot to swear you before you started. Would you hold up your hand to be sworn?

Mr. WILKINS. Yes, sir.

The CHAIRMAN. Has the evidence you have given and the evidence you will give been the truth, the whole truth, and nothing else, so help you, God?

Mr. WILKINS. I did, and I do, Senator.

The CHAIRMAN. Thank you. You may continue.

Mr. WILKINS. I was addressing the last question, Senator. In conclusion, I would say that I do not believe that the first amendment is a protection to those who would distribute hardcore pornography. There must be limitations to every right and every freedom if we are going to preserve those basic freedoms and rights.

Our Federal Government, the Congress, and our State legislatures have a legitimate interest in prohibiting the distribution of pornography in our communities and particularly child pornography.

I have had some experience in this area as a prosecutor and have dealt with the enforcement of our State law in South Carolina concerning the distribution of pornography over the past 6 years.

The CHAIRMAN. Do you feel that in some instances the first amendment has been stretched too far along this line?

Mr. WILKINS. If the first amendment is allowed to protect one who would cry "Fire!" in a crowded theater or to distribute hardcore pornography, then it has been stretched too far. There are limitations to every right. If we are going to preserve that right, we must recognize those limitations.

The CHAIRMAN. I do not believe there is any other Senator here who desires to ask any questions.

I see Judge Anderson sitting back there. We confirmed him, I believe, 2 years ago. I understand Judge Walter Cox is back there; and I see Mr. Tony Campbell from Greenville here, a lawyer.

Do you three lawyers want to make any statement about Mr. Wilkins? If you do, please come forward.

[No response.]

The CHAIRMAN. Maybe these judges would not care to make any statement, especially since they are on the bench.

Mr. Campbell, do you want to come up here and make any statement you care to about Mr. Wilkins?

Mr. CAMPBELL. Thank you, Senator.

I do not think I could add anything to what has been said.

The CHAIRMAN. Do you favor him for a judge?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. That is what I wanted to know.

I believe Mr. Chuck Evans from Greenville is here and Ms. Maureen McGregor from your home county.

Do you all know Mr. Wilkins?

Mr. EVANS. Yes, sir.

Ms. MCGREGOR. Yes, sir.

The CHAIRMAN. Do you want to make any statement?

Ms. MCGREGOR. No. We are just for him.

Mr. EVANS. I want to say what a great help he has been to the public school system, working with us in government education and political science classes, and what a help he has been to me personally.

The CHAIRMAN. Do you recommend he be confirmed as a Federal judge?

Mr. EVANS. Definitely, yes.

The CHAIRMAN. That is what I wanted to know.

Is Mr. Bill Robertson here?

Mr. ROBERTSON. Yes, sir.

The CHAIRMAN. I believe you are president of the South Carolina Trial Lawyers Association.

Mr. ROBERTSON. Yes, sir.

Our board of directors very early, when we knew he was being considered, sent a letter endorsing him, and he got a unanimous endorsement from our association.

The CHAIRMAN. Your association has unanimously endorsed him?

Mr. ROBERTSON. Yes, sir.

The CHAIRMAN. Would you recommend him yourself, as a lawyer?

Mr. ROBERTSON. Yes, sir, I would. I have practiced in the criminal courts before Mr. Wilkins representing the accused, and I have found him to be very fair and very honorable, and I would endorse him.

The CHAIRMAN. Thank you very much.

Mr. ROBERTSON. Thank you, Senator.

The CHAIRMAN. Is there anyone else who wants to make a statement, pro or con, about Mr. Wilkins?

[No response.]

The CHAIRMAN. It seems everybody is satisfied with you, Mr. Wilkins, and I feel certain that you will encounter no trouble in confirmation before the full committee.

Again, I want to congratulate President Reagan for appointing you and congratulate you upon this high and responsible position. We hope you will serve for many, many years. I predict you will make one of the finest jurists that the country has had.

I think that completes your hearing, Mr. Wilkins. Thank you very much.

Mr. WILKINS. Thank you, Senator.

[Prepared statement of Hon. Carroll A. Campbell, Jr., follows:]

PREPARED STATEMENT OF HON. CARROLL A. CAMPBELL, JR., BEFORE THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF THE NOMINATION OF W. W. WILKINS, JR., FOR THE U.S. DISTRICT COURT

Mr. Chairman, I am delighted to have the opportunity today to enthusiastically endorse Mr. Billy Wilkins for the high and responsible position of U.S. District Judge.

The President and you, Mr. Chairman, could not have made a better choice for the Federal Bench. Billy Wilkins has served my home county of Greenville, South Carolina, with distinction as 13th Circuit Solicitor since 1974. As a matter of fact, Billy was so successful in clearing up a backlog of dockets during his first term that he ran unopposed for his second term. One of the most highly respected attorneys in the Piedmont, Billy's legal acumen and exceptional intelligence are widely hailed in South Carolina legal circles.

Mr. Chairman, I feel safe in saying we can expect great things from Billy Wilkins as a Federal Judge. His dedication and strict adherence to constitutional principles will serve our State and this Nation well.

Billy is a fine gentleman whom I am proud to call a friend. I urge and trust that he will be confirmed expeditiously and without opposition.

Thank you, Mr. Chairman.

NOMINATION OF WILLIAM C. LEE

The CHAIRMAN. Now we have the hearing on the nomination of William C. Lee.

The distinguished Senator from Indiana, Senator Lugar, is here. Both Senators are here. Senator Quayle is here, also.

Would you come forward and have seats?

Mr. Lee, have a seat.

Mr. Lee, hold up your hand, and I will swear you in the beginning.

Mr. LEE. Yes, sir.

The CHAIRMAN. Do you swear that the evidence you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. LEE. I do.

The CHAIRMAN. I do not want to detain these Senators. I know how busy they are. I might call on them at this time, the senior Senator first.

Senator Lugar, would you care to make a statement on behalf of Mr. Lee?

STATEMENT OF HON. RICHARD LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Thank you very much, Mr. Chairman.

I am grateful for the opportunity to introduce to you a dedicated and deserving fellow Hoosier, William C. Lee of Fort Wayne, and to come to you today to speak on his behalf and urge speedy confirmation of his nomination as U.S. district judge for Indiana's northern district.

I would like to begin, Mr. Chairman, by thanking you personally for accelerating this extremely important confirmation hearing. As you know, the caseload situation in the northern district of Indiana is perhaps the most critical in the Nation.

In 1978, Congress authorized a fourth judgeship for the northern district. However, for a variety of reasons, this position has remained vacant. In addition to this vacancy, the recent death of Judge Phil McNagny left two judges struggling to do the work of

four. These two vacancies have contributed to a backlog of 1,867 civil and 56 criminal cases.

These figures do not take into account the number of cases that have been referred to other courts and jurisdictions because of the known delay in Indiana's northern district.

Bill Lee is uniquely and superbly qualified for this position. Born in Fort Wayne, Ind., Bill Lee has had a distinguished career as a practicing attorney in both the public and private sector.

A graduate of the University of Chicago Law School in 1962, Bill Lee has had 9 years of public service in various positions including deputy prosecuting attorney for the 38th judicial circuit, chief deputy for the 38th judicial circuit, and U.S. attorney for the northern district of Indiana.

Coupled with this public service, Bill Lee has 16 years of private practice with an extensive amount of litigation in both civil and criminal law. The Merit Commission on Federal Judicial Appointments created by Senator Dan Quayle and me to select final candidates for these posts ranked Mr. Lee highest among over 20 contenders for this vacancy.

Northern Indiana is in desperate need of first-rate judicial assistance. The citizens of Indiana can have great confidence that quality relief is on the way with the potential confirmation of Bill Lee as U.S. district judge for Indiana's northern district.

I again thank you for this opportunity to share these thoughts and to introduce this distinguished potential judge whom we hope will be confirmed by the committee.

The CHAIRMAN. Thank you very much, Senator.

Senator Quayle, do you have a statement you wish to make in his behalf?

STATEMENT OF HON. DAN QUAYLE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator QUAYLE. Thank you very much, Mr. Chairman.

I would ask unanimous consent that my statement be inserted in the record.

The CHAIRMAN. Without objection, it will be inserted after your opening remarks.

Senator QUAYLE. I would just like to echo what my distinguished colleague, Senator Lugar, has said—that Bill Lee, in any kind of communication with people around the State, came out on the top of everybody's list. The panel that made the selection rated him outstanding.

We are very privileged that you would have him before this committee at this very early opportunity and commend you and your leadership for that.

We realize that South Carolina always comes first in this committee, but Indiana is glad to be a close second, and the President will be very well gratified by the competence and the intelligence with which Bill Lee will perform.

He is indeed a high-caliber attorney who has experience in the private sector and experience in the public sector. He was a U.S. attorney from March 1970 to March 1973.

He is a family man in the community of Fort Wayne, a community which I had the pleasure of serving as its Congressman. Not

only has he worked in that community but he has been very active and very well respected in his sought profession.

He currently serves as president of the board of trustees of the Fort Wayne community schools and has been a very active member of that board since July 1978.

Mr. Chairman, you are to be commended; the President is to be commended; and the northern district of Indiana will be blessed by the judicious leadership that Bill Lee undoubtedly will give us. We certainly appreciate the expeditious fashion in which you have conducted these hearings.

We are certain that Bill Lee will be confirmed, and we wish him well.

The CHAIRMAN. Thank you very much.

[The prepared statement of Senator Quayle follows:]

Senator Dan Quayle

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STATEMENT
by
Senator Dan Quayle
of Indiana
before the
Committee on the Judiciary
of the
United States Senate

Tuesday, July 14, 1981

Mr. Chairman and Members of the Committee:

I am pleased to join with my colleague from Indiana, Senator Dick Lugar, in presenting to the Committee a distinguished attorney and public servant, William C. Lee, of Fort Wayne. Mr. Lee has been nominated to serve as a United States District Judge for the Northern District of Indiana.

Bill Lee is the first nominee for a Federal Judgeship to emerge from a competitive and non-partisan selection process by a Merit Commission in Indiana and subsequently nominated by President Reagan. He is truly deserving and highly qualified to serve on the Federal bench. Without hesitation or reservation, I urge the Committee to act favorably in recommending the confirmation of Bill Lee.

Mr. Chairman, I commend you and the Committee for moving forward on this nomination with some dispatch. Four active District Judges are authorized for the Northern District of Indiana. However, for more than two and one-half years since the last omnibus bill was passed, the position for which Mr. Lee has been nominated has stood vacant. There is a heavy backlog of cases which constitutes a virtual judicial emergency in that District.

Today, you can take an important step forward in helping ease that emergency by moving this nomination forward. Other recommendations of the Indiana Merit Commission are in the hands of the Attorney General for evaluation. It is hoped that we can achieve the full complement of judges as authorized by Congress in the near future.

With the nomination of Bill Lee we have a high caliber attorney whose experience as both a private practicing lawyer and as a United States Attorney from March, 1970 to March 1973, provides to the nation a person with unique and thorough preparation to assume the position of United States District Judge.

During his nearly 20 years of legal experience, Bill Lee has participaced from the other side of the bench in virtually every function which is performed by a United States District Judge. Upon his confirmation by the United States Senate in 1970 as a U.S. Attorney, he established an outstanding record in the conduct of both civil and criminal cases.

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Significantly, Bill Lee's service and accomplishments have not been confined to the legal profession. He is an active participant in the educational and cultural life in his community of Fort Wayne.

He has been an ardent supporter of the arts, working on behalf of the Fort Wayne Arts Foundation, the Fort Wayne Philharmonic Orchestra, and the Fort Wayne Civic Theatre. He currently serves as President of the Board of Trustees of the Fort Wayne Community Schools, and has been an active member of that Board since July, 1978.

Mr. Lee received his law degree from the University of Chicago in 1962 where he finished in the top 25 percent of his class.

Mr. Chairman, Bill Lee has proven himself to be a man of diligence, intelligence, and integrity. He is prepared to discharge his duties as a Federal District Judge with the same enthusiasm and industry he has shown in carrying out his responsibilities as an attorney and a private citizen.

The CHAIRMAN. We appreciate the presence of both you Senators here and the outstanding remarks that each has made about this nominee.

Mr. Lee, would you like to introduce your family? I see you have some members of your family here.

TESTIMONY OF WILLIAM C. LEE, NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF INDIANA

Mr. LEE. Thank you, Mr. Chairman.

May I present my wife, Judy; my son, Richard; and my daughter, Cathy?

The CHAIRMAN. You have a lovely family.

Mr. LEE. Thank you.

I have another son, by the way, who is not here. He had some other obligations that he could not get away from in Fort Wayne.

The CHAIRMAN. And I know how busy Senators are. If they wish to stay, they are welcome to do so. If not, they may be excused.

I just have a few questions for you, Mr. Lee.

Mr. Lee, I believe you were born in Fort Wayne in 1938.

Mr. LEE. Yes, sir.

The CHAIRMAN. So the probability is that you will be on the Federal bench for a long time.

I believe you got your B.A. degree from Yale University and your law degree from the University of Chicago. Is that right?

Mr. LEE. That is correct, Mr. Chairman.

The CHAIRMAN. You have been in private practice, and you have also served as deputy county prosecutor and U.S. attorney for the Department of Justice?

Mr. LEE. Yes, sir.

The CHAIRMAN. Were you in the Department of Justice, or were you assistant district attorney, or what?

Mr. LEE. I was the U.S. attorney for the northern district of Indiana.

The CHAIRMAN. Oh, you were U.S. district attorney?

Mr. LEE. Yes—from 1970 to 1973.

The CHAIRMAN. I see.

You come highly recommended by two outstanding and distinguished Senators.

Mr. LEE. Thank you.

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The CHAIRMAN. Mr. Lee, what do you perceive to be some of the major demands and pressures of being a Federal judge, and how will you attempt to resolve them for yourself?

Mr. LEE. The principal pressures that I see in the northern district of Indiana now relate to a problem that Senator Lugar and Senator Quayle cited, which is that we have had one or two vacancies now for some time.

We have a tremendous backlog of cases in the northern district, particularly in the civil area, and I think that the biggest pressure that I perceive in the district is to deal with the backlog and to try to get the docket in a position so that justice, in fact, is not denied to many residents of the northern district.

I think the docket situation is the biggest pressure that we face in the northern district of Indiana.

The CHAIRMAN. Mr. Lee, what sort of guidelines should a judge follow in determining the propriety of Federal judicial intervention into State affairs?

Mr. LEE. I would say that the principal guideline should be one of considerable restraint. I think that, in a more general way, judges, and particularly Federal judges, should concentrate on deciding the particular cases and controversies that are presented to them in a competent and technically sound fashion.

I think judges should always resist what I perceive to be a native tendency to act as super legislators, and I think this matter of dealing with State affairs is a good example of that.

The CHAIRMAN. I am glad to hear you take that position because for a number of years some judges have felt it their duty to do what most people call, in effect, legislate.

What is your view of the death penalty?

Mr. LEE. I am in favor of it, relating to certain classes of offenses.

The CHAIRMAN. What, in your opinion, is needed to speed up the disposition of Federal cases? Would it be more judges, magistrates, a change in the criminal procedures, or what can be done to speed up the process?

Mr. LEE. I see it essentially as a matter of additional personnel, Senator. I think the procedures, as I have practiced them now for some 15 years in the Federal courts and as U.S. attorney, are actually constructed to provide expeditious disposition of cases.

I think with the Speedy Trial Act and other innovations like that the system is geared up to handle speedy dispositions. I think in our case we have just been short of personnel to do it.

The CHAIRMAN. Would you give me your views on the question of child pornography and the laws relating to child pornography?

Mr. LEE. I would say that as a general proposition I would be in favor of laws prohibiting child pornography. To deal with it much more specifically than that, I would have to have more specific facts before me, but obviously, as a general proposition, I would be very much in favor of laws prohibiting child pornography.

The CHAIRMAN. Speaking about the death penalty, we have passed out of the Judiciary Committee—and it is now before the Senate—a bill to impose the death penalty, or to reimpose it, you might say. We had a death penalty at the Federal level several years ago, and it was stricken by the Supreme Court.

The Congress met the requirements of the situation and passed a law with regard to hijacking. We now have the death penalty for hijacking. We do not have it for murder, treason, or espionage.

It is very probable that this bill will be passed—if not this year, maybe next year.

I presume you have no reluctance to impose this sentence if a man was found guilty?

Mr. LEE. No, not if the law and the facts justified it—I would not.

The CHAIRMAN. Do you have anything else you would like to say?

Mr. LEE. I think not, except to thank the committee for its expeditious treatment of my nomination, to thank the President for the nomination, and my two Senators for appearing here today and saying those kind things on my behalf.

The CHAIRMAN. We have heard fine reports about you, and both Senators endorse you highly, so we feel certain there will be no trouble in getting you confirmed by the full committee and the Senate.

We wish you a long tenure of productive service on the bench.

Mr. LEE. Thank you very much, Senator.

The CHAIRMAN. I believe that is all the nominations we have this afternoon. We will adjourn this hearing.

[Whereupon, at 3:05 p.m., the hearing was recessed, to reconvene at the call of the Chair.]

BIOGRAPHIES

WILLIAM W. WILKINS, JR.

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF SOUTH CAROLINA

Birth: March 29, 1942, Anderson, South Carolina.

Legal Residence: South Carolina.

Marital Status: Married; Carolyn Adams Wilkins, 3 children.

Education: 1960–64—Davidson College, B.A. degree; 1964–67—University of South Carolina, J.D. degree, Editor-in-Chief, Law Review, Order of Wig & Robe.

Bar: 1967—South Carolina.

Military Service: 1967–69—U.S. Army, Honorable discharge (Captain); 1967 to present—U.S. Army Reserve, Lt. Colonel.

Experience: 1969–70—Law Clerk, Hon. Clement Haynsworth, U.S. Ct of Appeals, 4th Cir.; 1970—Legislative Aide, Senator Strom Thurmond; 1971–78—Wilkins & Wilkins; 1971–72—Assistant Circuit Solicitor, 13th Judicial Circuit (part-time); 1972—State Campaign Director, Re-elect Senator Thurmond; 1973–74—Asst. Greenville County Solicitor (part-time); 1972 to present—Law Instructor, Greenville Technical College (part-time); 1975 to present—Solicitor, 13th Judicial Circuit.

Office: Suite 112, Greenville County Courthouse, Greenville, South Carolina 29601, 803–298–8647.

Home: 37 Quail Hill Drive, Greenville, South Carolina.

WILLIAM C. LEE

NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF INDIANA

Birth: February 2, 1938, Fort Wayne, Ind.

Legal residence: Indiana.

Marital status: Married to Judith Anne Bash Lee, 3 children.

Education: 1955–59—Yale University, B.A. degree; 1959–62—University of Chicago Law School, J.D. degree.

Bar: 1962—Indiana.

Experience: 1962–64—private practice, Fort Wayne, Ind.; 1963–69—Allen County Prosecutor's Office, Deputy County Prosecutor; 1964–70—Parry, Krueckeberg & Lee,

partner; 1970-73—U.S. Attorney, Northern District of Indiana, U.S. Department of Justice; 1973 to present—Hunt, Suedhoff, Borror, Eilbacher & Lee, partner.

Office: 9th Floor, Inland Building, Calhoun at Berry Street, Fort Wayne, Ind. 46802, 219-423-1311.

Home: 1607 Dodge Avenue, Fort Wayne, Ind., 219-483-2669.

CONFIRMATION HEARING ON: ROBERT F. CHAPMAN, D. BROOK BARTLETT, JOHN R. GIBSON, AND JOSEPH E. STEVENS, JR.

TUESDAY, JULY 28, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:20 p.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Laxalt, Hatch, Grassley, and Specter.

Staff present: Duke Short, chief investigator; Allan Spence, investigator; Pamela Swanner, clerk.

Senator THURMOND. The committee will come to order.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. We are pleased today to have before the committee Judge Robert F. Chapman of South Carolina to be circuit judge for the U.S. Court of Appeals for the Fourth Circuit, Mr. D. Brook Bartlett of Missouri to be U.S. district judge for the Western District of Missouri, Mr. John R. Gibson of Missouri to be U.S. district judge for the Western District of Missouri, and Mr. Joseph E. Stevens, Jr., of Missouri to be U.S. district judge for the Eastern and Western Districts of Missouri.

NOMINATION OF ROBERT F. CHAPMAN

We will take up Judge Chapman's confirmation first. Judge, if you and Senator Hollings will be seated, we will proceed.

Judge Chapman, we are glad to have you with us. Before we start, I think it appropriate that you be sworn.

Do you swear that the evidence you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge CHAPMAN. Yes, sir.

The CHAIRMAN. If you have family here, it is customary to introduce them. I know your wife is here. Are there any other members of your family you would like to introduce?

Judge CHAPMAN. My wife, Mrs. Chapman, is here, and my son, Fostor Chapman, my brother, Hugh Chapman, and his wife, Ann Chapman are here.

The CHAIRMAN. We are very pleased to have all of you here. I might say there is not a more prominent family in South Carolina

than the Chapman family. They are among some of the finest citizens we have.

I am very pleased today to introduce to the Senate Judiciary Committee Judge Robert Fostor Chapman of the U.S. District Court for the District of South Carolina, nominated by President Reagan to be a member of the Fourth Circuit Court of Appeals.

A native of Inman, S.C., and a graduate of the University of South Carolina and the University of South Carolina Law School, Judge Chapman began his law career in 1949 as an associate member in the firm of Osborne, Butler, & Moore in Spartanburg, S.C.

Judge Chapman served most capably within this organization until 1951, when he was assigned as administrative assistant to the Chief of Staff of Communications for the Commander of Naval Forces in the Marianas Islands, Guam.

Upon his return to South Carolina in 1953, Judge Chapman formed the Spartanburg law firm of Butler & Chapman, which later became the firm of Butler, Chapman, Parler, & Morgan. Judge Chapman remained a partner in this firm until 1971, when he was appointed as a U.S. district judge for the District of South Carolina, a position in which he has capably and honorably served until the present time.

Although he has been active in Republican politics, as reflected by the fact that he was chosen as chairman of the South Carolina Republican Party in 1962, Judge Chapman has earned the reputation of being completely nonpartisan and eminently fair to all who appear before him regardless of their political affiliations.

Judge Chapman is well-known and respected for his unbiased and legally sound judgments in all matters coming before his court. Judge Chapman is one of the hardest working and most dedicated individuals I have had the pleasure of knowing. I offer my unequivocal support to his nomination.

I am most pleased that Judge Chapman has been nominated to be a circuit judge of the U.S. Court of Appeals for the Fourth Circuit. It is my opinion that he will continue to be an asset to the judicial system in this position.

Judge Chapman, we welcome you.

Senator Hollings is here to make a statement.

Senator, we are glad to have you with us.

STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. Thank you very, very much, Mr. Chairman.

Mr. Chairman and members of the committee, I am pleased indeed to be here and consider it a privilege, along with the chairman, to introduce a distinguished citizen of South Carolina, Judge Robert F. Chapman. He has been nominated by President Reagan to be a circuit court judge for the U.S. Court of Appeals for the Fourth Circuit upon the elevation of Judge Clement Haynsworth to senior status.

And, Mr. Chairman, I would be remiss indeed if I did not take a few moments to point out for the record that South Carolinians and the entire Nation are deeply indebted for the truly outstanding service that Judge Haynsworth, a native of Greenville, S.C., has

given during his long tenure on the court of appeals. While Judge Haynsworth's many contributions as a jurist and chief judge of the fourth circuit will be missed we are equally proud that we have in Judge Robert Chapman an individual capable of carrying forward the outstanding and well-deserved reputation that able jurists such as Judge Haynsworth have so rightfully earned for the fourth circuit.

I have attached to my statement a brief background sheet that will point up the particulars of Judge Chapman's record. As well, I have attached a copy of the letter I wrote to President Reagan, dated May 15, 1981, in which I called attention to and recommended Judge Chapman for the position which is the subject of today's hearing. These documents will acquaint you in some detail with the achievements of Judge Chapman and, in part, why I feel he is so well qualified for elevation to the court of appeals. However, let me take a few minutes to present them here so you can get the full flavor of the credentials he brings to this important, lifetime, appointment.

Robert F. Chapman was born in Inman, S.C., on April 24, 1926, to James A. and Martha Marshall Chapman. He received his early education in the public schools of Spartanburg County and graduated from Spartanburg High School in 1940. He received his B.S. degree in 1945 and his LL.B. degree in 1949 from the University of South Carolina. His education was interrupted for service in the U.S. Navy from 1943 to 1946, where he held the rank of lieutenant.

Upon graduation from law school and being admitted to the South Carolina Bar in 1949, he returned to Spartanburg and began the practice of law. For the next 22 years he practiced with distinction and the admiration of the members of the bar. In 1971 President Nixon appointed Bob Chapman to the U.S. District Court for the District of South Carolina.

In his capacity as Federal district judge, Bob Chapman is widely known and respected for his integrity, fairness, firmness, and compassion. His decisions are well-conceived, brilliantly articulated, and they evidence his evenhandedness. He possesses a keen legal mind and his nomination is based on merit and qualification. I am confident that these qualities that have endeared him to many South Carolinians will be quickly evident to attorneys practicing before the fourth circuit.

The honors and awards and citations of Bob Chapman's public service are too numerous to recite here, but they reflect the respect of his colleagues in law and jurisprudence, his civic associates, his friends and neighbors. He is a member of an outstanding family that has achieved much, but contributed more, to the well-being of its community and State. It is not insignificant that other members of his family are successes in their chosen fields of work. This speaks well for Bob and the high standards he sets for himself and encourages in others. Bob is married to the former Mary Winston Gwathmey. They are the parents of three sons.

Mr. Chairman and members of the committee, let me close my remarks with a quote from my letter to President Reagan urging this nomination. Bob Chapman "is eminently qualified for this nomination. The fourth circuit would be strengthened with this addition and I am pleased to recommend him. I do so with enthusi-

asm and total confidence." We in South Carolina are proud of Bob Chapman and the outstanding ability he brings to his chosen field of work, and we are confident that he will continue his able work as a jurist on the circuit court of appeals. I urge swift approval for his nomination.

I can follow up on the chairman's comment with respect to Judge Chapman's distinguished family. I think the record should be shown, Mr. Chairman, that Judge Chapman is from one of the most distinguished families in the history of our State. He has his brother here, Hugh, who is chairman of the board of our C. & S. Bank. There is another brother, Jim, who is chairman of the Chapman Mills, who is working with two other brothers, Marshall and Joe, who are chief executive officers there. Then he has another brother there somewhere along the line.

Judge CHAPMAN. Bob is a cousin.

Senator HOLLINGS. Judge Chapman is the judge's judge. I think the first requirement of a judge is to possess good judgment. For the past 10 years we have had the pleasure of supporting Judge Chapman as a district judge. He has demonstrated clear and sound judgment and has gained a wealth of experience. His value and contribution to the the bench is outstanding. I was reminded just a few minutes ago, when meeting with him, that I stated to him some time ago that regardless of the outcome of the election last November I was going to recommend him for the first Fourth Circuit Court of Appeals vacancy. I am glad that the distinguished chairman has made that recommendation.

That was easily done because without question Judge Chapman has been accepted for his brilliance of mind, his evenhandedness in judgment, his articulateness in expressing the law, his thoroughness in researching it, and his fairness in administering it. I think this is a true test. We in the practice of law like to know a judge for his judgment and not for some kind of unique quirk. Where you never take a criminal case before him or you never take a civil case or you worry about the client because of that quirk or idiosyncrasy. On the contrary, you do not have to worry about appearing before Judge Chapman. He has a thorough understanding of all the law, and his decisions have shown that he would make an outstanding member of our Fourth Circuit Court of Appeals.

I will not pass up the opportunity to comment on the fact that he is replacing Chief Judge Clement F. Haynsworth, Jr., who is taking senior status.

Just a moment ago on the floor, in his capacity as chairman of the Finance Committee, Senator Robert Dole was handling the tax bill. Someone commented about how I was an admirer of Senator Dole. I said that I would always be an admirer of Senator Dole, and particularly grateful, because, back in 1969, other than the distinguished chairman and myself, Bob Dole was the only one on his side of the aisle really out on the floor every day, early in the morning to late in the evening, handling and fighting for the nomination of Judge Haynsworth to the U.S. Supreme Court. As the distinguished chairman knows, we had the minority whip come onto the Judiciary Committee and, necessarily, our side thought we had an extra vote for Judge Haynsworth, but, surprisingly it turned out, we did not. We even had the minority leader request-

ing the President to withdraw the nomination. We had a difficult time.

The point I make is that since that time numerous Senators, easily over the five needed to change the outcome of that confirmation vote, have come to me and commented that they wished they had voted otherwise. They reflect that they were caught up in the fever of the particular appointment. The record should show, and I take time to make it here, that there has been no one who has accepted this particular, in a sense, mistreatment in a more dignified and compassionate manner than Judge Haynsworth. He continues to grace the Bench as the chief judge, the ranking one behind all of our Supreme Court Justices, chief judge of the fourth circuit. I am sure that Judge Chapman will be an outstanding replacement.

I thank the chairman, and I will be glad to try to answer any questions you might have.

[The letter to President Reagan follows:]

ERNEST F. HOLLINGS
SOUTH CAROLINA

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DEMOCRATIC POLICY COMMITTEE
OFFICE OF TECHNOLOGY ASSESSMENT
NATIONAL OCEAN POLICY STUDY

May 15, 1981

Honorable Ronald W. Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

It is my distinct pleasure to recommend the nomination of Judge Robert F. Chapman for the next vacancy that occurs on the United States Court of Appeals for the Fourth Circuit. I understand that Judge Clement F. Haynsworth, Jr. will soon be taking senior status and it is this vacancy that I have in mind.

Bob Chapman's outstanding character and integrity, keen legal mind, knowledge of the law, and judicial temperament have won him the respect of South Carolinians from all walks of life and of his judicial colleagues around the nation. His outstanding service as United States District Court Judge for South Carolina gives me the highest confidence that he would serve in this new capacity with real distinction.

Over the years the Fourth Circuit has been favored with very capable, even outstanding, jurists. The South Carolinians presently serving on this Court reflect the kind of quality and experience we need on the Federal bench. You will find Bob Chapman's record and ability consistent with the high standards we desire to promote in our judiciary.

Bob Chapman is a native of Spartanburg, South Carolina and is a product of its public schools. He is a graduate of the University of South Carolina and its law school. He served his country in World War II as a Lieutenant in the U.S. Navy. He became a member of

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the South Carolina Bar in 1949 and returned to Spartanburg and practiced law with distinction until his appointment to the Federal bench by President Nixon in 1971. The honors and awards and citations of his public service are too numerous to recite here, but they reflect the respect of his colleagues in law and jurisprudence, his civic associates, his friends and his neighbors. He is a member of an outstanding family that has achieved much, but contributed more, to the well-being of its community and state. It is not insignificant that other members of his family are successes in their chosen fields of work. This speaks well for Bob and the high standards he sets for himself and encourages in others.

I believe you will find that his tenure as District Judge over the past decade reflects his integrity, fairness, firmness and compassion. His decisions are well-conceived, brilliantly-articulated and they evidence his even-handedness. He is eminently qualified for this nomination. The Fourth Circuit would be strengthened with the addition of Bob Chapman and I am pleased to recommend him. I do so with enthusiasm and total confidence. If I can provide further information or assistance in any way, please do not hesitate to call upon me.

Sincerely,

Ernest F. Hollings

EFH:ati

The CHAIRMAN. Thank you very much, Senator Hollings. I know you are busy. Feel at liberty to leave whenever you wish. We have no questions.

Judge Chapman, at this time, I would be pleased to have you answer a few questions that I would propound to you.

Judge CHAPMAN. Yes, sir.

The CHAIRMAN. However, before I begin, Senator Grassley of Iowa, a distinguished member of this committee, is here. He may have some opening statement or remarks.

Senator GRASSLEY. Mr. Chairman, I do not have an opening statement, but if there is time, I want to ask a few questions.

TESTIMONY OF ROBERT F. CHAPMAN, NOMINEE, CIRCUIT JUDGE, U.S. COURT OF APPEALS, FOURTH CIRCUIT

The CHAIRMAN. Judge Chapman, as a district court judge, you have had to make rulings after careful consideration of the facts as presented at trial. If confirmed as an appellate judge, you will be reviewing the decisions of district court judges. What criteria do you intend to use in reviewing those decisions and trial records?

Judge CHAPMAN. First, I think the most important thing in reviewing any trial record is the facts. If you get the facts straight, the law seems to fall into place. I think it is important for any appellate judge to read the record very carefully to make sure he is passing on the same thing that the district judge passed on. Quite often appellate judges are criticized because they have overlooked things in the record.

I think the most important thing is that you are basing your opinion on the same facts that were presented to the district judge, and to always remember that, as an appellate judge, you are not a trial judge. You are a reviewer of possible error in the case. You

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are not supposed to retry. You are supposed to see if there was any error in the case.

The CHAIRMAN. Judge Chapman, recently this committee has been holding hearings on the role of the Federal judiciary in a number of matters such as school prayer, busing, and abortion. Without commenting on any of these issues specifically, what do you believe should be the role of a Federal judge in issues involving both law and social policy?

Judge CHAPMAN. I think social policy should be set by the Congress of the United States and the legislatures of the various States. Judges should not legislate. They are there to interpret the law that has been passed by the legislative branch.

The CHAIRMAN. Judge Chapman, during your tenure in the district court, have you been able to discern any effect on litigation as a result of the promulgation of rules by regulatory agencies?

Judge CHAPMAN. Yes, sir. I think the regulatory agencies are trying to take the place of Congress in many instances and pass rules and regulations that were not intended by the Congress when they passed certain laws. If Congress would pass a law that is 2 pages long, an administrative agency will write 200 pages of regulations.

I think my position on regulatory agencies is best exemplified by the Tris case concerning fire retardant children's sleepwear with which you are familiar, where I struck down not the regulations but the manner in which they handled the imposition of the regulations upon the various industries without any hearing, without any due process, and with more concern for public opinion than for the due process provisions of our Constitution.

The CHAIRMAN. Judge Chapman, I am certain that you have entertained false conviction petitions or habeas corpus. In this regard, do you feel that the use of this writ could be controlled by Congress to limit repeated frivolous applications?

Judge CHAPMAN. One of the biggest problems that a Federal district judge has is repetitive petitions for writ of habeas corpus, particularly by State prisoners. They have already gone through the State system. Then they start up the Federal ladder.

I think there should be a law passed that every person of course is entitled to one writ, but he should include in that writ every ground that he has. The way we have it now, they piecemeal the courts and keep the dockets behind by raising a point of admission of evidence in one, some other point in another one when that is turned down, and I find that most criminals, after they have exhausted every other ground, turn on their lawyers. The last ground of every convicted criminal is to contend that his lawyer, who has stood by him through thick and thin, was incompetent. He was not incompetent until he lost all the appeals. Then the last refuge of the criminal is to fight his own lawyer in an effort to save himself.

I think the Congress could do a great service if they would pass a law saying that the writ must include every ground or possible ground that the convicted criminal has or thinks he has for the great writ to be issued.

The CHAIRMAN. Senator Grassley, do you have some questions?

Senator GRASSLEY. Yes, I do.

I, like the chairman, am interested and have listened to your point of view on interpreting the law as opposed to making the law. I am glad to hear that is your point of view.

I would like to take it one step further and ask what you personally do to discipline yourself in order to remain an interpreter of the law as opposed to becoming a lawmaker.

Judge CHAPMAN. I think the greatest temptation for a judge is to try to solve a problem with a decision rather than to solve the litigation that is before him. All we, as district judges, have authority to do is to decide the dispute that is presently before the court. There is a great temptation when you say that this problem is going to come up again and again and the best thing for me to do is issue some broad order and expound on my personal opinion as to what the law should be if that is not what it is.

However, I think that this temptation can be resisted if a trial judge and an appellate judge completely realize that he must resolve the issues in front of him and not try to make broad policy. We are problem solvers in that we handle the litigation between the plaintiff and the defendant only. We cannot worry about everybody else in the big picture. Our job is to decide the issues that are presented to us and not try to paint with a broad brush.

Senator GRASSLEY. Your opinion on separation of powers between the Congress and the judicial system has been covered basically with that question, I think.

Now as to your point of view regarding the division of power between the States and the Federal Government, to what extent do you believe the Federal Government is a government of limited power, do you believe in strict interpretation of the Federal Government's powers, and what will you do to carry out the concept of respect for reserved powers of the States?

Judge CHAPMAN. I believe in reserving to the States every power that is possible. I think people at the local level are better able to solve their problems, if you will pardon the expression, than people up here beyond the Potomac River trying to solve them for the whole country.

I think the more power left with the States, the better off we are all going to be. This is a Federal Republic and we should try to keep it that way. Too many people have the idea that the Constitution of the United States is the way that the Government takes care of the people when really it is the way that the people prevent the Government from interfering in their own lives. That is the way it should be.

Senator GRASSLEY. You would see your activity on the court of appeals as carrying out that basic philosophy?

Judge CHAPMAN. I think I have carried it out for the last 10 years. I see no change taking place in the next 20, I hope.

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman. That is all the questions I have.

The CHAIRMAN. Thank you.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Listening to your testimony here today is like a breath of fresh air after listening to 300 of those who were appointed over the last

4 years. All I can say to you is I am very happy to see your nomination come up here.

Let me ask you one question that is kind of a current question. That is, under article 3 of the Constitution, do you believe that the Congress has the power to limit the jurisdiction of the inferior Federal courts?

Judge CHAPMAN. I think you have the right to limit the authority of the courts because we are courts of limited jurisdiction. There are a great many people, I am afraid, who are sitting on the courts who do not believe there is any limit to their jurisdiction. However, we can only hear things that you and the Congress say we can hear.

Senator HATCH. How about limiting the jurisdiction of the Supreme Court? Does the Congress have that capacity and ability?

Judge CHAPMAN. I would say that you have that right, except on constitutional issues. I do not see how you can limit the Supreme Court of the United States from hearing a constitutional question.

Senator HATCH. Or from hearing a question involving the violation of constitutional rights, privileges, and immunities, I take it?

Judge CHAPMAN. Right.

Senator HATCH. That is all I have, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Specter?

Senator SPECTER. Thank you very much, Mr. Chairman.

Judge Chapman, do you think that the Congress has the authority to limit the jurisdiction of the Federal court of appeals or the United States district courts on constitutional issues?

Judge CHAPMAN. I think you have the right to limit what the district courts can hear, and if you limit what the district courts can hear, you limit what the circuit courts can review. We cannot review something that they have not heard to begin with because there is no original jurisdiction in the circuit court of appeals. If you control the cases and the issues and the topics that can be brought before the district courts, you control the same thing that is brought before the circuit courts.

Senator SPECTER. Assuming that is so, would that not then constitute a limitation on what the Supreme Court of the United States can hear, at least as it relates to their certiorari or appellate jurisdiction?

Judge CHAPMAN. It could, but there are other ways of getting to the Supreme Court besides the writ of certiorari.

Senator SPECTER. How would you bring a constitutional issue to the Supreme Court of the United States on, say, a case involving segregation, which had customarily been brought in the district court?

Judge CHAPMAN. You could bring it under the 15th amendment rather than under one of the Civil Rights Acts. You could bring it under the 15th amendment and then it would be a constitutional issue to begin with.

Senator SPECTER. If it were a constitutional issue under the 15th amendment as you describe it, could the Congress limit the jurisdiction of the United States district courts in that respect?

Judge CHAPMAN. I think you are in a gray area. I really do not know the answer to that.

Senator SPECTER. Why is it gray if it is under the 15th amendment but not if it is under the equal protection clause of the 14th amendment?

Judge CHAPMAN. Either one. We usually hear them under both. Those types of cases are brought under the various Civil Rights Acts, under the 15th amendment, or under the 14th amendment.

Most people hunt with a shotgun and not a rifle in the courts. I wish they would hunt with a rifle and just give you one issue to decide, but most people use scattershot and bring up all these peripheral issues that somewhere along the line you have to rule on.

I know that is a burning issue up here. I do not know how you can prevent the Supreme Court, and possibly the other courts, if you move it back down the line, from hearing a constitutional issue if it is framed in the constitutional light.

You could stop the courts from hearing automobile accident cases. You could stop them from hearing truth-in-lending cases, and I wish you would. They bog our courts down and nobody ever has any damage. All they come in to get is the reward if they prove you printed something on the back that should have been on the front of the note.

There are all kinds of things that I wish you would relieve us of, but whether you can relieve us of a constitutional issue I think is for greater legal minds than mine at the moment.

Senator SPECTER. Judge Chapman, I quite agree with you that where Congress has created the remedy or the cause of action or the jurisdiction as in diversity cases or truth-in-lending matters, it is no problem. However, where a litigant comes into court asserting a constitutional right, that is the issue.

Judge CHAPMAN. That is a real problem.

Senator SPECTER. We have a problem; as matters now pending which are coming up tomorrow indicate, but you may also have a problem because that is the kind of issue which I think you may well have to face on the court of appeals. Your record on the district court suggests that you were being unduly modest when you said it is for greater legal minds than yours.

Judge CHAPMAN. One thing about the court of appeals is there is always someone to correct our papers. The Supreme Court makes the final decision. If we mess it up, there is always somebody to straighten it out. I just do not know on that question. If it is a constitutional issue, I do not think you can keep it out of the courts.

Senator SPECTER. I tend to agree with your last conclusion.

Judge CHAPMAN. However, I am all in favor of diversity jurisdiction.

Senator SPECTER. Limiting jurisdiction?

Judge CHAPMAN. I think it is the only fair way for nonresidents in certain small counties——

Senator SPECTER. Oh, you are in favor of diversity jurisdiction.

Judge CHAPMAN. I favor keeping diversity jurisdiction. I understand there is a move up here to get rid of diversity jurisdiction. I think there are a lot of other things we could get rid of before we get rid of diversity jurisdiction.

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Senator SPECTER. Is the $10,000 limitation realistic for diversity jurisdiction?

Judge CHAPMAN. Not any longer.

Senator SPECTER. What do you think it should be?

Judge CHAPMAN. I would say $25,000 to $50,000. I know there is a great feeling that we should get rid of diversity jurisdiction. I made a speech on this at the ABA convention in Hawaii last year, taking the opposite side from Congressman Butler of Virginia, who is in favor of getting rid of it.

There are certain small counties in every State that are dominated by a lawyer, a State senator, a State representative, or some group that can pretty well control not the amount of a verdict, but if you get a nonresident passing through town that hits a person or has an automobile accident or has a plant there, they are much better off in the Federal court where they can get a jury picked from 12 to 15 counties rather than one picked from the State senator's own machine. This is not true just of Southern States. It is true all over the United States.

Senator SPECTER. Just a couple of other questions, Judge: With respect to the issue of sentencing, do you think it would be wise to have mandatory sentences, or do you think that the trial judge ought to have unlimited discretion on the imposition of sentences?

Judge CHAPMAN. I would not say that the trial judge had to have unlimited discretion, but he certainly needs discretion.

Senator SPECTER. Are you opposed then to the principle of mandatory sentences?

Judge CHAPMAN. I am not opposed to the principle of mandatory minimum sentences, or mandatory sentences between certain limits, but I would be opposed to absolute mandatory sentences in every case.

In South Carolina, for armed robbery in the State courts, there is a mandatory 7-year sentence, no parole, no anything. You do 7 years. That has helped a great deal. It has helped in bank robbery cases. It has helped in Seven-Eleven store holdups. I think that type of sentence is very good. That is the minimum amount. However, the judge still has some leeway. I think there are times when the judge has to try to let the punishment fit the crime, you might say.

Senator SPECTER. Do you think judicial salaries should be raised?

Judge CHAPMAN. I am satisfied with the last raise. It was obtained more through the courts.

Senator SPECTER. Do you think that ought to be left to the Congress or to the courts?

Judge CHAPMAN. I think it should be left to the Congress.

I live in a small town in South Carolina. All of my children are educated, except one who has one more semester to go. I would feel sorry for some of the younger judges who have children getting ready to go to prep school or college. However, now that I have gotten through that stage somehow or other—I did live off of principal part of the time—I am content. Maybe you should not judge the whole Federal judiciary by my situation.

Senator SPECTER. Thank you very much, Judge Chapman.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Judge Chapman, thank you very much for your appearance here. I think everybody who desired to, has had the opportunity to propound questions. We wish you great success on the fourth circuit court of appeals. We feel you will make one of the ablest, finest, and fairest members of the circuit court of appeals in the history of this country.

Judge CHAPMAN. Thank you, Senator. I appreciate being here. I appreciate your sponsorship for this position. I appreciate everything that you have done not only since the election but for the last 50 years for the people of South Carolina and all the citizens of the United States.

The CHAIRMAN. Thank you very much.

If there are no questions now from anyone else, we will excuse Judge Chapman.

Judge, you may wish to remain here. If you care to, you and your family. If you feel you need to leave at any time, feel free to do so.

NOMINATION OF D. BROOK BARTLETT, JOHN R. GIBSON, AND JOSEPH E. STEVENS, JR.

We will now take up the nomination of D. Brook Bartlett of Missouri. We have three from Missouri. I think all three of you may come around with Senator Danforth. We will also take up the nomination of John R. Gibson, and Joseph E. Stevens, Jr.

Gentlemen, if you will raise your hands, we will swear you in.

Do you swear that the evidence you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BARTLETT. I do.

Mr. GIBSON. I do.

Mr. STEVENS. I do.

The CHAIRMAN. We will first hear from Senator Danforth. I know he is very busy. He has told me what outstanding lawyers and gentlemen you are. We would be very pleased to hear from him in person at this time.

STATEMENT OF HON. JOHN DANFORTH, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator DANFORTH. Mr. Chairman, thank you very much. Let me say to you that I appreciate your scheduling this hearing and also your cooperation and that of the committee of scheduling an executive session of the committee for Thursday. I share your hope that a quorum will be present at that meeting.

Mr. Chairman, this has really been one of the great experiences of my public life, to participate in the nomination proceedings for three potential Federal district judges in my State of Missouri.

I have a complete statement which I would like included in the record if that is permissible.

Let me say that the process that led to this moment included the appointment of a blue ribbon committee of citizens from western Missouri, members being appointed by the bar, by the law school deans, and two members appointed by me.

The commission, in turn, went through 29 applicants, interviewed 29 individuals, and presented a list of 10 names to me. I

then proceeded to canvas opinion of the bench and the bar. I am absolutely convinced, Mr. Chairman, that the three people who are sitting before you are the three best-qualified available candidates for the Federal bench in western Missouri.

John Gibson is a member of the law firm of Morrison, Hecker, Curtis, Kuder, Parrish of Kansas City. He is a graduate of the University of Missouri and University of Missouri Law School. He has extensive experience in litigation. He is a past vice president of the Kansas City Board of Police Commissioners. He was chairman of the drafting committee of the Jackson County Charter Commission. He has served as president of the Kansas City Bar Association. He is past president of the Missouri Bar.

Joe Stevens is a member of the firm of Lathrop, Koontz, Righter, Clagett, Norquist of Kansas City. He is a graduate of Yale University and University of Michigan Law School. He is a past winner of the Lon O. Hocker Memorial Trial Lawyer Award, which is the most coveted award for trial lawyers in the State of Missouri. He is now president of the Missouri Bar. He is chairman of the Southern Conference of Bar Presidents of the American Bar Association. He has served on the board of governors of the Truman Medical Center in Kansas City and is a former member of the Jackson County Welfare Commission.

Brook Bartlett is a member of the law firm of Blackwell, Sanders, Matheny, Weary, Lombardi of Kansas City. He is a graduate of Princeton University and Stanford Law School. When I was attorney general of Missouri, he served as an assistant attorney general for 8 years, 4 of them as my first assistant. He supervised some 30 or 40 lawyers in criminal, civil, and administrative law. He was the chief trial lawyer in the attorney general's office. I had the experience of working with him for an 8-year period of time on a day-in-and-day-out basis. I can testify from firsthand experience as to his legal competence and his demeanor and personal qualities which would in my opinion make him an excellent Federal judge.

I can say to you, Mr. Chairman and Senator Laxalt, that it is an exciting experience for me to participate in recommending to the President and in turn to this committee three people who I think have outstanding qualifications for this very high position.

[The prepared statement of Senator Danforth follows:]

INTRODUCTORY STATEMENT FOR
JOHN GIBSON, JOSEPH STEVENS AND BROOK BARTLETT
BEFORE THE JUDICIARY COMMITTEE

Mr. Chairman, it is my great privilege to introduce to this Committee President Reagan's nominees for appointment to the position of federal district judge for the Western District of Missouri, John Gibson, Joseph Stevens and Brook Bartlett.

Before describing their outstanding credentials, I would like to comment about the process by which they were selected. I have always been an advocate of merit selection for choosing members of the federal judiciary. In my view, the credibility of the judicial system is seriously undermined if the public comes to believe that judicial officers have been selected simply because they have backed one politician or another. It is my belief that the process for selecting judicial officers should be out in the open, guided by a panel of distinguished citizens so that the public feels assured that the nominee is qualified to serve in federal office.

To fulfill this commitment, I appointed a Merit Selection Commission in the Western District of Missouri to assist in the process of making recommendations to the President. This blue ribbon panel reviewed the applications of 29 candidates, from which ten highly qualified names were submitted to me. From this list I recommended John Gibson, Joseph Stevens and Brook Bartlett to President Reagan for nomination to the position of federal district judge. I am convinced that this process has served the people of Missouri well by allowing me to recommend the very best persons for these extremely important positions.

John Gibson is a member of the law firm of Morrison, Hecker, Curtis, Kuder and Parrish in Kansas City, Missouri. He is a graduate of the University of Missouri at Columbia and the University of Missouri at Columbia Law School. He was admitted to practice law in Missouri in 1952 and since that time has specialized in litigation. He has extensive experience in the trial of lawsuits and has gained a reputation as being one of the finest trial lawyers in Missouri. His trial practice has included cases ranging from criminal contempt and products liability to antitrust and contract actions. He has also had an extensive appellate practice, appearing before the United States Supreme Court, the Missouri Supreme Court and both federal and state Appellate

Courts. He has served as Vice-President of the Kansas City Board of Police Commissioners and Chairman of the Drafting Committee of the Jackson County Charter Commission. In 1970 and 1971, he served as President of the Kansas City Bar Association and in 1977 and 1978 he served as President of the Missouri Bar. He has an outstanding reputation not only as a highly qualified trial attorney but also as a leader in the bar and in his community.

Joseph Stevens is a member of the firm of Lathrop, Koontz, Righter, Clagett, and Norquist of Kansas City, Missouri. He is a graduate of Yale University and the University of Michigan Law School. He was admitted to the practice of law in Missouri in 1952 and since that time has specialized in litigation. He has extensive experience in federal courts and has tried a number of complex civil cases. He is a member of the bars of the United States Supreme Court, the United States Courts of Appeal for the Eighth Circuit and District of Columbia and the United States District Court for the Western District of Missouri. In 1973, he was a winner of the prestigious Lon O. Hocker Memorial Trial Lawyer Award for his skill as a trial attorney. He now serves as President of the Missouri Bar and Chairman of the Southern Conference of Bar Presidents of the American Bar Association. He also served as Treasurer of the Lawyers Association of Kansas City. In addition to his service to the bar, he has served in numerous church and civic capacities, including membership on the Board of Governors of the Truman Medical Center in Kansas City, and as a former member of the Jackson County Welfare Commission. Joseph Stevens has an outstanding reputation as a skilled trial attorney and as a community leader. I have known him quite well for the past 13 years. I consider him to be able, experienced and highly qualified in every way to serve as a United States District Court judge.

Brook Bartlett is a member of the law firm of Blackwell, Sanders, Matheny, Weary and Lombardi in Kansas City, Missouri. He is a graduate of Princeton University and Stanford University Law School. He was admitted to practice law in Missouri in 1963 and since that time has specialized in litigation. In the 1960's he was an associate and then a partner in the firm of Stinson, Mag, Thomson, McEvers and Fizzell in Kansas City. In 1969, he came to work for me as an Assistant Attorney General of

Missouri. During my second term as Attorney General, he served as my first assistant. During his tenure as an Assistant Attorney General, he was called upon to represent the state and its agencies in numerous complex cases involving issues of constitutional and statutory interpretation in fields such as education and election law among others. As my first assistant, he was responsible for supervising from 30 to 40 lawyers in the criminal, civil, administrative law and consumer protection divisions of the Attorney General's office. In early 1977, he left the Attorney General's office and joined the Blackwell Sanders firm. I worked with Brook Bartlett on a day-to-day basis over an eight-year period of time. I consider him to be an extraordinarily able attorney with extensive experience in the federal courts. He has every personal quality necessary to make an excellent United States District judge.

Mr. Chairman, again let me say what a pleasure it is for me to present these distinguished gentlemen to the committee. It is my sincere hope that this committee act expeditiously on their nominations so they may be confirmed by the full Senate as quickly as possible. Thank you, Mr. Chairman

The CHAIRMAN. Thank you very much, Senator Danforth.

After that high recommendation, you gentlemen have a lot to live up to.

Senator Eagleton was here a few moments ago. He is a member of the Ethics Committee, which is hearing a matter at this time. Senator Eagleton says he fully and unqualifiedly endorses the three nominees from Missouri for the three district judges in the western district of Missouri. I want the record to show that.

We will now proceed with questions of Mr. Bartlett.

Mr. Bartlett, what do you perceive to be some of the major demands and pressures of being a Federal judge, and how will you attempt to resolve them for yourself?

TESTIMONY OF D. BROOK BARTLETT, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF MISSOURI

Mr. BARTLETT. Mr. Chairman, I think the primary demand and pressure on a Federal judge is to resolve specific disputes brought before that judge expeditiously and thoroughly. Fairness should not be sacrificed to expedition. On the other hand, with the docket problems in the western district of Missouri, means must be devised to expeditiously resolve the specific disputes brought before that court.

The CHAIRMAN. In what instances, Mr. Bartlett, would you disqualify yourself as a judge at a trial?

Mr. BARTLETT. Mr. Chairman, the first instance would be any case in which my wife, who is a lawyer, would have in the court.

Second would be for a period of time any case brought by my present law firm. Next, any case in which I had any financial interest in any way, shape, or form in any party. Last, any case in which I did not feel that for any reason I could not be perfectly fair and objective to both parties.

The CHAIRMAN. Mr. Bartlett, what are your views on prison sentences?

Mr. BARTLETT. My views, Mr. Chairman, on that are that the sentences first of all should be left in large part to the discretion of the judge who has heard the evidence, seen the report of the board of probation and parole, and would be in a position to assess what would be appropriate in the circumstances.

However, I would not be at all hesitant to see Congress set minimum sentences where Congress believed necessary, or to set a range of sentences, but I do believe it would be a mistake to withdraw entirely from a Federal judge the discretion to sentence.

The CHAIRMAN. Our new proposed code, for instance, provides for more uniform sentences for the same crime within maximum and minimum limits. In some cases, some judges have given 20 years for a crime and others have given 2 years. It is felt that there is too much latitude in that way. On the other hand, you have to give a judge enough to be flexible. I just wondered how you felt about sentencing.

Mr. BARTLETT. To some extent, Mr. Chairman, I think it does bring a question to the mind of the public if a person is convicted in one part of the country for an offense which is precisely identical to an offense which someone was convicted in another part of the country and the sentences are vastly different.

On the other hand, in my experience the identity of the offense committed is not always that easy to determine, but certainly under similar facts and circumstances, it would seem to me the sentence ought to be uniform regardless of where the offense was committed.

The CHAIRMAN. Mr. Bartlett, what do you view as necessary to prepare yourself as a U.S. Federal district judge and to familiarize yourself and be prepared to take the heavy criminal caseload which is probably waiting for you?

Mr. BARTLETT. Mr. Chairman, I will do everything in my power to see that the provisions of the Speedy Trial Act are abided by. Although I must admit that my criminal experience has not been extensive, I will do everything in my power to bone up and become ready to take my share of that load.

The CHAIRMAN. Senator Laxalt?

Senator LAXALT. I do not think I have any questions, Mr. Chairman.

The CHAIRMAN. Without objection, a résumé of Mr. Bartlett will appear in the record.

TESTIMONY OF JOHN R. GIBSON, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF MISSOURI

The CHAIRMAN. We will now turn to the nomination of John R. Gibson.

Mr. Gibson, I have just a few questions here.

Mr. Gibson, how do you feel personally about your own capacity at this point in your career to carry out the very significant powers and responsibilities of being a Federal district judge?

Mr. GIBSON. Senator, I have practiced law for 30 years, almost all in the trial and appellate fields. While most of it has been civil, I have had some limited exposure to the criminal side. I think the essential responsibility that is placed on the trial judge is to be thorough and to be fair. I hope I have those personal qualities. I think it is necessary to work hard to keep the docket up to date, to keep up with your cases, and keep them moving. I would expend all of my energies to that purpose.

The CHAIRMAN. Mr. Gibson, are you concerned about strong advocates of public issues being appointed to the Federal bench?

Mr. GIBSON. Yes. Well, I think if persons have been a strong advocate of some public issue, this could well affect their views and capability in particular areas of being as objective as they should be in those cases.

The CHAIRMAN. Lawyers are frequently employed on one side or the other, however, and as an advocate, it is his duty to represent his client on whichever side he is employed, is it not?

Mr. GIBSON. I am sorry. I did not hear all of that.

The CHAIRMAN. I said a lawyer could be employed for the plaintiff one time and the defendant the next. It is his duty and responsibility to represent his client, and the fact that he has espoused certain positions on issues should not necessarily disqualify him, I would presume.

Mr. GIBSON. Oh, I think not. I do not know, but I suppose some would say I have been somewhat more on one side of civil cases than the other, but I have represented both parties. Every time a new case comes into the office, it is necessary as a lawyer that I represent that client. Of course, as the judge, the duty is to be fair and impartial to both parties.

The CHAIRMAN. What are your views on penalties for second or third offense drug dealers?

Mr. GIBSON. I think any time you have additional offenses of the same crime, this must be treated very strongly by the courts. I think one of the greatest problems in the criminal area has been that you have the career criminal who simply commits one offense and then goes on to second, third, and even more. Of course there are statutes that deal specifically with that, but certainly within the judge's exercise of discretion, that is a factor that must be considered.

The CHAIRMAN. Is there anything else you wish to say?

Mr. GIBSON. Senator, I simply would express my appreciation to this committee for arranging for this hearing. I know that the time strictures at this time are very great.

The CHAIRMAN. I have a few questions I want to propound to all of you when we get through, but I now call on Senator Laxalt.

Senator LAXALT. I do not have any questions, Mr. Chairman. I think you have covered the various questions very well.

The CHAIRMAN. Without objection, a résumé of Mr. Gibson will appear in the record.

TESTIMONY OF JOSEPH E. STEVENS, JR., NOMINEE, U.S. DISTRICT JUDGE, EASTERN AND WESTERN DISTRICT OF MISSOURI

The CHAIRMAN. We will now proceed to the nomination of Joseph E. Stevens, Jr. We have a few questions, Mr. Stevens, to propound to you.

What do you feel will be the most rewarding aspect of serving as a judge?

Mr. STEVENS. I think probably the most rewarding thing to me, as has been part of the reward in practicing law, will be to take some personal role in helping people resolve disputes with other people.

The CHAIRMAN. Why does that responsibility challenge you or interest you at this time?

Mr. STEVENS. As I mentioned, I have been practicing law for 29 years, 26 of them as a civilian and 3 of them in the service. I have had what I think is a varied experience in the practice, in both civilian and military life. I believe that from that experience I am prepared to take on this aspect of the administration of justice. I look forward to doing it.

The CHAIRMAN. Many States now, including mine, have continuing legal education. I believe Minnesota has this. I spoke at a seminar of that kind out in Minnesota last Saturday. I presume that you would not be adverse to continuing education for lawyers and would not even be adverse if the State saw fit to make it mandatory?

Mr. STEVENS. Senator, I am happy you mentioned that because Missouri has one of the pioneer and pilot continuing legal education programs of any organized bar in the United States. It is a very extensive and active program. At this time, it is voluntary.

The board of governors of the Missouri bar, of which I am president at this time, has recommended a rule to our supreme court to make continuing legal education mandatory by court rule. I favored that at the time it came up before the board. Whether mandatory or voluntary, we proved in Missouri that lawyers will do it on a voluntary basis. I think it is essential for lawyers to continue to educate themselves.

The CHAIRMAN. It has been suggested that our prisons turn prisoners into more professional criminals. In your opinion, what can or should be done to improve prisoner rehabilitation?

Mr. STEVENS. That area is something as to which I would approach this new position with more anxiety than maybe anything else. I would be frank to say, Senator, that I do not know the answer to that question, except I know it to be a very critical problem that has to be dealt with and I would put my best efforts to dealing with it.

The CHAIRMAN. What are your views on the laws relating to child pornography? I would like to hear the position of the other judges on that, too.

Mr. STEVENS. I got the last of your question but not the first of it, Senator.

The CHAIRMAN. What are your views on the laws relating to child pornography? Would you feel free to enforce laws on pornography?

Mr. STEVENS. Yes, sir. I will expand on that if you want me to, but my answer is, yes, sir, I would.

The CHAIRMAN. I would like to hear the views of the other nominees on that.

Mr. GIBSON. Certainly our duties as judge are to hear our cases agreeably to the laws and Constitution of the United States. Those laws, as well as all others, we would have a duty to hear and enforce as they should be enforced. I think that is a very serious and significant problem in this society today.

The CHAIRMAN. I would be glad to hear from you, Mr. Bartlett.

Mr. BARTLETT. Mr. Chairman, assuming the Federal statutes dealing with child pornography, assuming a balancing of the interests between the very important first amendment rights and the very important rights of society to control pornographic material, I would certainly have no hesitancy to enforce laws prohibiting pornographic material being made available to children.

The CHAIRMAN. I would like to ask you gentlemen this question: If we had a death penalty at the Federal level, would there be any hesitancy on your part to enforce such a law?

Mr. BARTLETT. No, Mr. Chairman.

Mr. GIBSON. Senator, I did not quite hear the entire question.

The CHAIRMAN. If we had the death penalty at the Federal level, would there be any question in your mind about enforcing that law?

Mr. GIBSON. No, Senator.

Mr. STEVENS. The same answer: No.

The CHAIRMAN. I would like to raise this question: In the past recent years, in the opinion of a great many people, the judiciary, especially the Federal judiciary, have been inclined to make law rather than interpret law. I would like to hear your position on that matter. Are you willing to confine your actions as a Federal judge to interpreting the law and not attempt to make the law even though you feel maybe the law should be changed?

Mr. BARTLETT. Mr. Chairman, I would agree with your statement and would say I have no hesitancy at all. I believe a Federal district judge's job is to resolve specific disputes and to do it not in accordance with the judge's personal views but in accordance with the laws passed by the Congress of the United States or the interpretations of the Constitution as made by courts higher than the district judge. It is not for the district judge to attempt to impose or express even his or her ideas about social policy.

The CHAIRMAN. And you would not be inclined to impose your personal views in the case?

Mr. BARTLETT. No, sir, Mr. Chairman. I think that would be inappropriate.

The CHAIRMAN. I would be happy to hear from you, Mr. Gibson.

Mr. GIBSON. In our constitutional scheme, Senator, strong responsibility of course is placed in legislative bodies. Legislative bodies may be changed by the electorate. Judges are appointed in the Federal system for life. I think it is totally inappropriate for Federal judges to enter the policymaking area. I think they should respect the constitutional responsibility in the Congress. I think they should respect the constitutional authority in the States to make law in their area.

Certainly the resolution of specific disputes, which is the essential duty of the Federal judge, involves interpretation of the law, but in interpreting the law, the judge should be very careful to recognize the constitutional scheme we have.

The CHAIRMAN. I would be pleased to hear from you, Mr. Stevens.

Mr. STEVENS. I could say amen and perhaps that would be adequate, Mr. Chairman, but I also believe that the constitutional responsibility for lawmaking is in the Congress of the United States.

By reason of some personal experience I have had recently, I am not only concerned about judicial activism, to which I think your question is directed, but I am also concerned about the unbridled power of regulation writers. I am seriously concerned with the authority and power that some in the executive department have and exercise, which I think does not necessarily always follow the will of Congress.

The CHAIRMAN. Senator Laxalt?

Senator LAXALT. I do not have any questions. Since I assume that the hearing is about to be concluded, I would like to congratulate all of you, your family, your friends, and Senator Danforth.

There are a number who say that being able to recommend a Federal judge is some kind of political goody. Most of us who have dealt with this problem before, whether as Governors or otherwise, recognize that that is not the case at all. If anything, if you want to characterize it, it is burdensome because you make a difficult decision and it is one you have to live with for a long time, like the life of the judge. I think all of us, when we assume this kind of responsibility, assume it in the serious vein that it should be undertaken.

I can tell from your past backgrounds that you are very capable candidates. You will make fine judges. I might say also that probably in each and every one of your cases, you are undertaking this responsibility with a great deal of financial sacrifice. Certainly people do not come on the Federal bench for the money.

The CHAIRMAN. Senator Laxalt, excuse me just a minute.

I want to welcome the Nigerian people who are here. We are very glad to have you here.

Senator LAXALT. Lastly, let me also say this. We on this committee have spent about 4 years processing some 150 Federal judges in the past administration. During all of that, I was impressed with the fact that here we were with all these people who were going to be around for a long time and who probably have more effect really upon the social fabric of this country than all of us here in the Senate and House combined.

The opportunity for mischief out there is enormous within the Federal bench and particularly in the trial court. On the other hand, the opportunity for great good is there as well.

I, for one, if someone would forgive my partisan reference here, am delighted that we are finally starting to develop a Reagan team, so to speak, out there on the Federal bench. I think that perhaps what we will not have in quantity will be made up in quality of the type that the three of you exemplify.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Laxalt. You are always sound in your observations.

Mr. Bartlett, do you have any of your family here whom you would like to introduce?

Mr. BARTLETT. Mr. Chairman, I would appreciate having the opportunity and the honor to introduce my wife, Karen Iverson Bartlett, and my daughter, Julia Bartlett.

The CHAIRMAN. Thank you.

Mr. Gibson, are any of your family here?

Mr. GIBSON. Senator, my family was not able to be here.

The CHAIRMAN. Mr. Stevens, do you have any of your family here?

Mr. STEVENS. Mr. Chairman, I have none of my family from home, but I have some of my legal family. I would like for you to meet my partners, Mr. Bill Leedy and Mr. Steve Jacobson, and my associate, Ms. Mary Hughes, all from our office here in Washington and Kansas City.

The CHAIRMAN. We are very glad to have the families and the associates here.

Senator Danforth, did you have anything you wished to say before we close?

Senator DANFORTH. Mr. Chairman, I do not, other than to again thank you for expeditiously holding this hearing. I was quite impressed with the answers given by these nominees, as I knew I would be. The only thing unsettling was my concern that the requirement for continuing legal education might apply to Members of Congress. Other than that, I think it went quite well.

Mr. STEVENS. That is specified in the rule, Mr. Chairman.

The CHAIRMAN. Without objection, a résumé of Mr. Stevens will appear in the record. If there are no other questions on the part of anyone, we have completed the hearing. We stand adjourned.

[Whereupon, at 3:10 p.m., the committee recessed, to reconvene at the call of the Chair.]

BIOGRAPHIES

ROBERT F. CHAPMAN

Birth: April 24, 1926, Inman, South Carolina.
Legal Residence: South Carolina:
Marital Status: Married, Mary Winston Gwathmey, 3 children.
Education 1944-45, University of South Carolina; 1946-49, B.S. degree and LL.B degree.
Bar: 1949, South Carolina.
Military Service, 10/45-7/46, United States Navy (Reserve); 12/51-9-53, Lieutenant when discharged.
Employment: 1949-51, Osborne, Butler & Moore, Spartanburg, S.C.; 1953-71, Butler, Chapman, Parler & Morgan, Spartanburg, S.C.; 6/1971-present, United States District Judge, District of South Carolina, Columbia, S.C.
Office: P.O. Box 876, Columbia, S.C. 29202, 803-765-5408.
Home: 1822 Fair Street, Camden, South Carolina 29020, 803-432-5841.
Ethnic Group: Caucasian.

D. BROOK BARTLETT

Birth: February 22, 1937, Kansas City, Missouri.
Legal Residence: Missouri.
Marital Status: Married, Karen M. Iverson, 4 children.

Education: 1955–59, Princeton University, B.A. degree; 1959–62, Stanford University, LL.B. degree.

Bar: 1963, Missouri; 1963, California.

Experience: 1962–69, Stinson, Mag, Thomson, McEvers & Fizzell, Associate, 1962–67, Partner, 1967–69, 1969–77, Attorney General's Office, State of Missouri, Asst Atty Gen, 1969–73; 1st Asst Atty Gen, 1973–77; 1977 to present, Blackwell, Sanders, Matheny, Weary & Lombardi; Associate, 1977–78; Partner, 1978 to present.

Office: 2480 Pershing Road, Kansas City, Missouri 64108, 816–474–5700.

Home: 1017 West 57th Terrace, Kansas City, Missouri 64113, 816–363–8823.

JOHN R. GIBSON

Birth: December 20, 1925, Springfield, Missouri.

Legal Residence: Missouri.

Marital Status: Married, Mary Elizabeth Vaughn, 2 children.

Education: 1946–49, University of Missouri at Columbia, A.B. degree; 1949–52, University of Missouri at Columbia Law School, LL.B. degree.

Bar: 1952, Missouri.

Military Service: 1944–46, United States Army, Staff Sergeant.

Experience: 1952 to present, Morrison, Hecker, Curtis, Kuder & Parrish, Associate, 1952–57; Partner, 1957 to present; 1973–77, Board of Police Commissioners, Vice President.

Office: 1600 Bryant Building, Kansas City, Missouri 64106, 816–842–5910.

Home: 207 E. 110th Street, Kansas City, Missouri 64114, 816–942–1269.

JOSEPH E. STEVENS, JR.

Birth: June 23, 1928, Kansas City, Missouri.

Legal Residence: Missouri.

Marital Status: Married, Norma Jeanne Umlauf, 2 children.

Education: 1945–49, Yale University, B.A. degree; 1947, Kansas City Junior College; 1949–52, University of Michigan, Law School, LL.B degree.

Bar: 1952 Missouri.

Military Service: 1952–55, United States Navy, Lieutenant.

Experience: 1955–56, Lombardi, McClean, Slagle & Bernard, Associate; 1956 to present, Lathrop, Koontz, Righter, Clagett & Norquist, Associate 1956–62; Partner 1962 to present (firm has had various names).

Office: 2600 Mutual Benefit Life Building, 2345 Grand Avenue, Kansas City, Missouri 64108, 816–842–0820.

Home: 425 West 55th Street, Kansas City, Missouri 64113, 816–523–4610.

CONFIRMATION HEARING ON: ROGER J. MINER, JOSEPH M. McLAUGHLIN, JOHN E. SPRIZZO, HENRY R. WILHOIT, JR., CONRAD K. CYR, JOHN C. COUGHENOUR, AND J. PAUL McGRATH

TUESDAY, SEPTEMBER 15, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:10 p.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Denton and Biden.

Staff present: Vinton DeVane Lide, chief counsel; Duke Short, chief investigator; and Pamela Swanner, clerk.

The CHAIRMAN. The Judiciary Committee will come to order.

I am pleased today to have before the committee New York Supreme Court Justice Roger J. Miner, nominated for the position of U.S. district judge for the Northern District of New York; Mr. Joseph M. McLaughlin, of New York, to be a U.S. district judge for the Eastern District of New York; Mr. John E. Sprizzo, of New York, to be a U.S. district judge for the Southern District of New York; Mr. Henry R. Wilhoit, Jr., of Kentucky, to be a U.S. district judge for the Eastern District of Kentucky, Chief Judge Conrad K. Cyr, of the Bankruptcy Appellate Panel, District of Massachusetts, to be a U.S. district judge for the District of Maine; Mr. John C. Coughenour, of Washington, to be a U.S. district judge for the Western District of Washington; and Mr. J. Paul McGrath, of New Jersey, to be Assistant Attorney General, Civil Division, Department of Justice.

NOMINATION OF ROGER J. MINER, JOSEPH M. M'LAUGHLIN, AND JOHN E. SPRIZZO

We will take them up in that order. I ask the New York judges, Roger J. Miner, Joseph M. McLaughlin, John E. Sprizzo, and the Senators and Congressmen who are accompanying them from their State to come forward.

STATEMENT OF HON. DANIEL P. MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Mr. Chairman, I thank you for the opportunity which is of great personal satisfaction to me to appear to

present to this honorable forum three of the finest attorneys the State of New York has produced in this generation.

The first of our candidates for you is Judge Miner, who is a member of the supreme court of the State of New York. To his left, sir, is the most distinguished dean of the Fordham Law School, Dean McLaughlin, who is leaving academia to practice what he has preached, which is equity and rigor in the law. Then to his left, sir, is Mr. John Sprizzo, who is a professor of law at Fordham University, a distinguished practicing attorney, and a man who has specialized in criminal matters on an important panel that Secretary Vance was the chairman of some time ago.

I know that these men will commend themselves to you, sir, and they will speak for themselves better than I.

The CHAIRMAN. We thank you for your appearance, Senator. As I understand it, you favor all three of these gentlemen?

Senator MOYNIHAN. Without reservation, sir.

The CHAIRMAN. You highly recommend them?

Senator MOYNIHAN. I highly recommend them.

The CHAIRMAN. We are delighted to have you here. We thank you very much for your appearance.

Senator MOYNIHAN. You are very kind.

The CHAIRMAN. You are now excused if you are through.

Senator MOYNIHAN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator D'Amato has come in. We would be glad to hear from you.

STATEMENT OF HON. ALPHONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Thank you, Mr. Chairman.

I know that my distinguished colleague, the senior Senator from New York, was here and indicated his great pleasure in supporting three outstanding nominees who the President has submitted to the Senate.

Justice Roger J. Miner, who has been nominated to be a district court judge for the Northern District of New York, is an eminently qualified jurist who is now sitting as the State supreme court judge.

Dean Joseph McLaughlin, the dean at Fordham University Law School, has been nominated for a U.S. District Court judgeship for the Eastern District of New York. Dean McLaughlin currently chairs the New York State Law Review Commission and serves as a consultant to the New York Judicial Conference.

The third nominee is an outstanding former Federal prosecutor, John Sprizzo, who has been nominated to be a U.S. district court judge for the Southern District.

Each of these nominees has distinguished himself in the area of the law and brings with that ability compassion, understanding, and the firmness that I believe will enhance our Federal court system.

Mr. Chairman, I am delighted to say to you that both Senator Moynihan's committee and our screening and review committee recommended all three of these gentlemen to be men of outstanding accomplishments with the kind of integrity and judicial back-

ground that will stand our district courts in great stead in these very troubled times.

I thank you for the opportunity to make these remarks in the record on behalf of those whom I believe will be three outstanding district court judges.

The CHAIRMAN. Thank you very much. Senator, since you are of the same party as the administration, I presume these gentlemen have your strong recommendation?

Senator D'AMATO. My very strong and unqualified support and endorsement.

The CHAIRMAN. Thank you for your appearance. If there is nothing else, you are now excused.

Senator D'AMATO. Thank you, Mr. Chairman.

[The prepared statement of Senator D'Amato follows:]

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STATEMENT OF U.S SENATOR ALFONSE M. D'AMATO

SEPTEMBER 15, 1981

MR. CHAIRMAN, IT IS WITH GREAT PLEASURE THAT I INTRODUCE TO YOU TODAY THREE DISTINGQUISHED NEW YORKERS WHO HAVE BEEN NOMINATED BY THE PRESIDENT TO FILL THREE U.S. DISTRICT COURT JUDGESHIPS IN NEW YORK STATE.

JUSTICE ROGER J. MINER HAS BEEN NOMINATED TO BE DISTRICT COURT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK. JUDGE MINER IS A NEW YORK STATE SUPREME COURT JUSTICE AND HAS A LONG DISTINGUISHED LEGAL CAREER BEHIND HIM.

ALSO OF EMINENT QUALIFICATIONS IS JOSEPH M. MCLAUGHLIN, THE DEAN OF FORDHAM UNIVERSITY LAW SCHOOL, WHO HAS BEEN NOMINATED TO A U.S. DISTRICT COURT JUDGESHIP FOR THE EASTERN DISTRICT OF NEW YORK. DEAN MCLAUGHLIN CURRENTLY CHAIRS THE NEW YORK STATE LAW REVIEW COMMISSION AND SERVES AS A CONSULTANT TO THE NEW YORK JUDICIAL CONFERENCE AND THE PRACTICING LAW INSTITUTE. HIS BROAD KNOWLEDGE OF THE INTRACICIES OF THE LAW WILL AID HIM WELL ON THE DISTRICT COURT.

THE PRESIDENT'S NOMINEE TO BE A U.S. DISTRICT COURT JUDGE FOR THE SOUTHERN DISTIRCT OF NEW YORK IS FORMER FEDERAL PROSECUTOR JOHN SPRIZZO. HE WAS A MEMBER OF THE WORLD FAMOUS KNAPP COMMISSION THAT INVESTIGATED ALLEGED CORRUPTION IN THE NEW YORK CITY POLICE DEPARTMENT AND HE SERVED AS ASSISTANT ATTORNEY GENERAL FROM 1963 TO 1968.

MR. CHAIRMAN, THESE DISTINGUISHED GENTLEMEN HAVE BEEN UNANIMOUSLY RECOMMENDED BY MY JUDICIAL SCREENING COMMITTEE, COMPOSED OF SOME OF THE FINEST LEGAL MINDS IN NEW YORK STATE.

THE COMMITTEE HAS WORKED DILIGENTLY TO RECRUIT HIGHLY QUALIFIED CANDIDATES FOR THESE POSITIONS. I AM THOROUGHLY SATISFIED THAT WE HAVE FOUND THE BEST POSSIBLE NOMINEES TO THE DISTRICT COURT.

THESE GENTLEMEN KNOW THE LAW. THEY ARE COMPASSIONATE BUT FIRM. THEY WILL ALWAYS BE FAIR. THESE GENTLEMEN WILL MAKE FINE DISTRICT COURT JUDGES.

MR. CHAIRMAN, I PRESENT ROGER J. MINER, JOSEPH M. MCLAUGHLIN, AND JOHN SPRIZZO TO THE COMMITTEE FOR YOUR CONSIDERATION.

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NOMINATION OF HENRY R. WILHOIT, JR.

The CHAIRMAN. These Senators who are here are very busy. We will let them speak on behalf of their people first.

Next is the nomination of Henry R. Wilhoit, Jr., from Kentucky.

Senator Ford, do you wish to come forward now? If you would like to present him now, I would like to accommodate you.

Is Senator Huddleston here?

Senator FORD. No; but as the chairman knows, Senator Huddleston is handling the farm bill. He will apparently be unable to attend.

The CHAIRMAN. Is Congressman Perkins here?

Senator FORD. Congressman Perkins is here.

The CHAIRMAN. Congressman, please have a seat.

Senator Ford, we are delighted to have you with us. You may proceed on behalf of the judge from your State, Henry R. Wilhoit, Jr.

STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator FORD. Mr. Chairman, I ask unanimous consent of the committee that a statement by Senator Huddleston in favor of Mr. Wilhoit's nomination and confirmation be included in the record.

The CHAIRMAN. Without objection, that will be done.

[The prepared statement of Senator Huddleston follows:]

PREPARED STATEMENT OF SEN. WALTER D. HUDDLESTON

MR. CHAIRMAN, I THANK YOU AND THE SENATE JUDICIARY COMMITTEE FOR THE OPPORTUNITY TO APPEAR TODAY AT THIS CONFIRMATION HEARING. I WHOLEHEARTEDLY SUPPORT THE NOMINATION OF HENRY WILHOIT, JR. TO THE EASTERN DISTRICT COURT OF KENTUCKY AND URGE THE COMMITTEE TO FAVORABLY REPORT HIS NOMINATION AS SOON AS POSSIBLE.

I AM ESPECIALLY PLEASED TO BE HERE TODAY BECAUSE THE NOMINATION OF A MAN OF HENRY WILHOIT'S STATURE AND QUALIFICATIONS IS POSITIVE PROOF THAT A NONPARTISAN CITIZEN SELECTION COMMISSION CAN WORK TO ASSURE THE SELECTION OF THE BEST NOMINEE.

ON OCTOBER 28, 1976 THE KENTUCKY BAR ASSOCIATION, MY DISTINGUISHED COLLEAGUE FROM KENTUCKY, SENATOR FORD, AND I CREATED A NONPARTISAN ADVISORY COMMISSION TO MAKE RECOMMENDATIONS FOR FEDERAL DISTRICT JUDGESHIP VACANCIES IN OUR STATE. THE COMMISSION OPERATES UNDER A FORMAL CHARTER WHICH DEFINES ITS SPECIFIC AUTHORITY.

ITS MEMBERSHIP IS COMPOSED OF NINE INDIVIDUALS WHO ARE REQUIRED TO REPRESENT, INSOFAR AS POSSIBLE, A CROSS SECTION OF THE PEOPLE OF KENTUCKY AS A WHOLE, INCLUDING DIVERSE POLITICAL AFFILIATIONS.

THE CHARTER PLACES AN AFFIRMATIVE DUTY ON THE COMMISSION

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TO SEEK OUT AND DETERMINE THOSE INDIVIDUALS WHO WOULD BE THE BEST QUALIFIED TO FILL EACH JUDGESHIP VACANCY AND TO RECOMMEND NO LESS THAN THREE NOR MORE THAN FIVE. IN TURN, SENATOR FORD AND I SUBMIT THE NAMES OF ALL OF THOSE RECOMMENDED BY THE COMMISSION TO THE PRESIDENT FOR HIS CONSIDERATION IN MAKING THE NOMINATION.

I AM EXTREMELY PROUD THAT THE KENTUCKY COMMISSION WAS THE SECOND ONE OF ITS KIND TO BE CREATED. SINCE THAT TIME, MANY OTHER FORMAL COMMISSIONS HAVE BEEN CREATED IN OTHER STATES TO ASSIST IN THE SELECTION OF DISTRICT COURT JUDGES, AND FROM ALL INDICATIONS, THESE COMMISSIONS ARE WORKING VERY WELL.

THE KENTUCKY COMMISSION EXHAUSTIVELY REVIEWED AND STUDIED THE QUALIFICATIONS OF MANY INDIVIDUALS BEFORE SUBMITTING A LIST OF THE FIVE CONSIDERED BEST QUALIFIED -- WHICH BRINGS ME TO MY PRIMARY REASON FOR BEING HERE TODAY.

HENRY WILHOIT WAS AMONG THOSE FIVE RECOMMENDATIONS, AND I CAN SAY WITHOUT ANY RESERVATION THAT HE TRULY DESERVES THE HONOR OF THIS NOMINATION AND WILL FULFILL HIS DUTIES WITH DISTINCTION. HE IS A MAN WHO HAS SUCCEEDED PROFESSIONALLY AS WELL AS PERSONALLY AND, IN SO DOING, HAS GAINED THE RESPECT AND ADMIRATION OF HIS FELLOW PROFESSIONALS, FRIENDS AND NEIGHBORS.

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MR. CHAIRMAN, FEDERAL DISTRICT COURT JUDGES ARE IN THE FOREFRONT ON MANY ISSUES WHICH WILL HAVE A REVERBERATING IMPACT UPON OUR SOCIAL, POLITICAL AND ECONOMIC LIFE. BECAUSE OF THIS UNIQUE ROLE THAT FEDERAL JUDGES ARE PLAYING, WE MUST ASSURE THAT THOSE WHO ARE APPOINTED TO FILL THESE POSITIONS ARE INDIVIDUALS OF THE HIGHEST CALIBER.

THEY MUST POSSESS THAT RARE COMBINATION OF JUDICIAL TEMPERAMENT, LEGAL KNOWLEDGE, PRACTICAL EXPERIENCE, UNQUESTIONABLE CHARACTER AND SAGACITY WHICH WILL ENABLE THEM TO FULFILL WITH DISTINCTION AND HONOR THE HEAVY RESPONSIBILITIES PLACED UPON THEM. I CAN ASSURE THIS COMMITTEE WITH NO HESITATION THAT HENRY WILHOIT POSSESSES ALL OF THESE CHARACTERISTICS.

IN PERFORMING EITHER AS A LAWYER OR COUNTY ATTORNEY, HIS LEGAL ABILITY HAS ALWAYS BEEN HIGHLY RESPECTED BY THOSE MEMBERS OF THE BAR WITH WHOM HE ASSOCIATES. I COULD GO ON AT CONSIDERABLE LENGTH ABOUT HIS QUALIFICATIONS, BUT WILL NOT DO SO BECAUSE THEY ARE ALL A MATTER OF PUBLIC RECORD, AND THE COMMITTEE, I KNOW, IS PRESSED FOR TIME.

INSTEAD, I WILL CONCLUDE WITH THE OBSERVATION THAT I KNOW HENRY WILHOIT TO BE A MAN OF HIGH INTEGRITY, UNQUESTIONABLE HONESTY AND EXTENSIVE COMMUNITY RESPECT. I URGE THE COMMITTEE'S SPEEDY CONFIRMATION OF HIM TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY.

BEST COPY AVAILABLE

Senator FORD. Mr. Chairman, since I know the committee has a number of nominations to consider today, I will keep my statement brief and to the point.

I am pleased to appear on behalf of Henry Wilhoit of Grayson, Ky., who has been nominated to fill a vacant judgeship which now exists in the Eastern District of Kentucky.

I commend the committee for acting so quickly in scheduling confirmation hearings on this nomination. As the committee is well aware, Mr. Wilhoit was recommended for this position by a nonpartisan, nine-member judicial selection committee that Senator Huddleston and I established in 1976.

While some have expressed reservations about the commission selection process for judicial appointments in recent months, I am extremely pleased with how our system has worked and remain committed to it.

Mr. Wilhoit was selected by the administration from the list of five candidates recommended by the commission. He is president of the Kentucky Bar Association, former Carter County attorney, and is presently engaged in the private practice of law in Grayson, Ky.

He is an individual of excellent ability and temperament. He has a distinguished judicial record and is held in high regard by his colleagues. I might add that his nomination for this important position has received strong praise from both within and outside the legal community.

I am pleased to endorse Mr. Wilhoit's nomination. I feel certain that he will be a credit to the bench, and I hope that this committee will continue to move with dispatch in favorably reporting his nomination to the Senate floor.

I thank the chairman for the opportunity to present him to you.

The CHAIRMAN. Thank you, Senator. We are pleased to have you with us. Thank you for your statement and for putting the statement of Senator Huddleston into the record.

[The statement of Senator Ford follows:]

PREPARED STATEMENT BY SENATOR WENDELL FORD

Mr. Chairman--Since I know the committee has a number of nominations to consider today, I will keep my statement brief and to the point.

I am pleased to appear on behalf of Henry R. Wilhoit of Grayson, Kentucky who has been nominated to fill a vacant judgeship which now exists in the Eastern District of Kentucky. I commend the committee for acting so quickly in scheduling confirmation hearings on this nomination.

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He is an individual of excellent ability and temperment. He has a distinguished judicial record and is held in high regard by his colleagues. I might add that his nomination for this important position has received strong praise from both within and ouside the legal community.

I am pleased to endorse Mr. Wilhoit's nomination. I feel certain that he will be a credit to the bench and I hope that this committee will continue to move with dispatch in favorably reporting his nomination to the Senate floor.

The CHAIRMAN. Congressman Perkins, we will be glad to hear from you.

STATEMENT OF HON. CARL D. PERKINS, A U.S. REPRESENTATIVE FROM THE STATE OF KENTUCKY

Mr. PERKINS. Senator Thurmond and members of the committee, I represent the congressional district where Henry Wilhoit resides. I have known Henry for 20 years and I know what the people say about him. Among those who know him best, his reputation is excellent. He is just a good man. There is nothing against his record in any way, shape, or form. He will be a credit to the bench. It would be my hope that the Senate would confirm him this afternoon. He deserves that type of high consideration.

Thank you.

The CHAIRMAN. Thank you very much, Congressman Perkins. We are pleased to have you here.

As I understand it, Senator, you highly recommend this gentleman?

Senator FORD. Without reservation, Mr. Chairman.

The CHAIRMAN. Congressman Perkins, you also highly recommend him?

Mr. PERKINS. Without reservation. No one can find a thing against him. His reputation is as clear as crystal.

The CHAIRMAN. At this point, we will accept the statements of Congressmen Gene Snyder and Larry J. Hopkins in support of the nomination into the record.

[The statements of Congressmen Snyder and Hopkins follow:]

PREPARED STATEMENT OF CONG. GENE SNYDER

Mr. Chairman, Members of the Committee, I want to join my colleagues from Kentucky in being placed on the record in enthusiastic support of the nomination of Henry R. Wilhoit for the post of Federal Judge for the Eastern District of Kentucky.

I won't burden the committee with reams of background information outlining Mr. Wilhoit's ample experience or qualifications for the position. I'm sure you have all the background information available you could possibly need. And I'm sure it clearly supports the contention that Mr. Wilhoit is superbly qualified for the job.

However, I would like to comment on one of Henry Wilhoit's most important assets--the high respect in which he is held by the legal profession in the State of Kentucky. I didn't really realize how many attorneys there were in the Eastern District of Kentucky until the letters endorsing Henry Wilhoit started pouring in--letters from private attorneys, county bar associations, Commonwealth Attorneys, and judges throughout the district.

He very obviously has the respect of his peers. He has their respect for his professionalism, for his ability as an attorney, and for his ethical standards. That respect is clearly reflected in the fact that he was elected President of the Kentucky Bar Association. And for the position of Federal Judge, I don't believe you can have any greater asset or any higher recommendation than the fact that your peers in the legal profession who have worked with you and seen you in action respect you. These are the people the next Federal Judge in the Eastern District will have to work with--and Henry Wilhoit has earned their respect.

For four generations, the Wilhoits have been noted in Kentucky for all of the finest qualities demanded of the advocate or the judge and I respectfully submit that Henry Wilhoit's confirmation would bring to the Eastern District bench everything that reasonably could be expected of a Federal Judge and more.

I respectfully urge a strong committee recommendation of the nomination of Henry R. Wilhoit.

September 15, 1981

STATEMENT BEFORE THE SENATE JUDICIARY COMMITTEE ON THE
CONFIRMATION HEARING OF HENRY R. WILHOIT, JR.
BY HONORABLE LARRY J. HOPKINS

Mr. Chairman:

I am sorry my schedule does not permit my appearing personally before your Committee to testify on behalf of the confirmation of Henry R. Wilhoit, Jr. as United States District Judge for Eastern Kentucky.

My absence today, due to my obligation as the assistant floor leader, should not be misunderstood as lack of support or enthusiasm for the nomination of Henry Wilhoit.

In fact, quite to the contrary, I could not more whole heartedly recommend the confirmation of anyone to fill such an important position as U.S. District Judge than I could Henry Wilhoit, Jr.

Henry Wilhoit has the legal expertise, the ethics and the temperament to be an outstanding federal judge. He is held in such high esteem by his fellow attorneys in Kentucky that they honored him by recently electing Henry as President of the Kentucky Bar Association.

As a practicing attorney in Grayson, Kentucky since graduation from the University of Kentucky College of Law, Henry has served as a delegate to the Judicial Conferences for the Sixth Circuit, is a member of the American Judicature Society and was recently inducted as a fellow of the American College of Trial Lawyers.

Besides his outstanding service to the legal profession, Henry Wilhoit, Jr. has been active in many civic and community affairs. He served as National President of the University of Kentucky Alumni Association and the Board of Trustees for numerous civic organizations like the Kentucky Society to Prevent Blindness and the Carter County Clinic.

Henry is a good family man and he and his wife, Jane, have three lovely children.

In closing Mr. Chairman, let me say after personally reviewing the credentials of over twenty persons interested in this position and after talking with a wide variety of people all across the Commonwealth concerning this appointment, Henry R. Wilhoit, Jr. was unanimously given the highest of recommendations. I am confident Henry will make an outstanding jurist and I recommend without reservation his confirmation.

The CHAIRMAN. Is there anything further you gentlemen wish to say?

[No response.]

The CHAIRMAN. We thank you for your appearance and you are excused.

NOMINATION OF CONRAD K. CYR

Next are the Maine Senators, Senator Cohen and Senator Mitchell, and we will proceed with the nomination of Mr. Conrad Cyr.

Senator Cohen, we are glad to have you with us. We will be pleased to hear from you. I presume this is your recommendation for the bench. You may proceed.

STATEMENT OF HON. WILLIAM S. COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COHEN. Thank you, Mr. Chairman.

I believe my colleague, Senator Mitchell, is on his way and will be appearing shortly.

I am delighted to have the opportunity to express my support for Conrad K. Cyr for the position of U.S. district court judge for the Northern District of Maine.

I might just point out that I have waited a long time to place Conrad Cyr's name in nomination because of my high regard for him and because of my knowledge regarding his background and training.

He was trained at Yale Law School. He then practiced law in Bangor for several years before being named assistant U.S. attorney in 1961. Then at the age of 29, he was appointed to a U.S. Bankruptcy Court judgeship, a position which he currently holds.

During his 20 years on the court, Judge Cyr has demonstrated a profound grasp of one of the most complicated and complex areas of the law that we know exists. He has impressed all of those who have worked with him and appeared before him with his skill, his insight, and, I would add, his compassion.

He has been a leading figure in the efforts to update the Federal bankruptcy laws in recent years. I know that you will recall that he has testified on a number of occasions before the House Judiciary Committee and the Senate Judiciary Committee on the subject. While I was a member of the House Judiciary Committee, I had a chance to work closely with him on what eventually became Public Law 95–598, the Bankruptcy Reform Act of 1978.

Because of his recognized expertise in this field, he was named president of the National Conference of Bankruptcy Judges in 1977, and since 1970, he has served as the editor of the prestigious American Bankruptcy Law Journal. Then in 1979 he received the Judges' National Recognition Award.

I would ask unanimous consent that the balance of my prepared statement be printed in the record, Mr. Chairman.

The CHAIRMAN. It will appear following your presentation.

Senator COHEN. I would like to say that I had an opportunity as a young lawyer to appear and practice before Judge Cyr. I do not know of any man whose intelligence and integrity I respect more. He is one of the brightest people I have ever met.

However, he brings to the bench not only intelligence but a great deal of humanity and compassion. I have looked forward for a long time to having this opportunity to appear before you to make this presentation. I would urge that his nomination be confirmed at this time.

The CHAIRMAN. You say you practiced under him?

Senator COHEN. I did indeed.

The CHAIRMAN. He looks as young as you do.

Senator COHEN. I do not want to get into the question of age before this committee, Mr. Chairman.

The CHAIRMAN. Senator, we thank you very much for your appearance.

[The prepared statement of Senator Cohen follows:]

PREPARED STATEMENT OF SENATOR WILLIAM S. COHEN

MR. CHAIRMAN, MEMBERS OF THE JUDICIARY COMMITTEE:

I AM VERY PLEASED TO BE HERE TODAY TO EXPRESS MY SUPPORT FOR CONRAD K. CYR FOR THE POSITION OF UNITED STATES DISTRICT COURT JUDGE FOR THE NORTHERN DISTRICT OF MAINE.

AFTER RECEIVING HIS LEGAL TRAINING AT YALE, CONRAD CYR WAS IN PRIVATE PRACTICE FOR SEVERAL YEARS AND ALSO SERVED AS ASSISTANT U.S. ATTORNEY. IN 1961, AT THE AGE OF ONLY 29, HE WAS APPOINTED U.S. BANKRUPTCY JUDGE, THE POSITION HE NOW HOLDS. DURING HIS 20 YEARS OF SERVICE ON THE COURT, JUDGE CYR HAS DEMONSTRATED A PROFOUND GRASP OF BANKRUPTCY LAW, ONE OF THE MOST COMPLEX OF LEGAL

SUBJECTS, AND HAS IMPRESSED ALL THOSE WHO HAVE WORKED WITH AND APPEARED BEFORE HIM WITH HIS SKILL, HIS INSIGHT AND HIS COMPASSION.

A LEADING FIGURE IN EFFORTS TO UPDATE THE FEDERAL BANKRUPTCY LAWS IN RECENT YEARS, JUDGE CYR TESTIFIED A NUMBER OF TIMES BEFORE BOTH THIS COMMITTEE AND THE HOUSE JUDICIARY COMMITTEE ON THIS SUBJECT. HIS EXPERTISE WAS PARTICULARLY HELPFUL TO ME AS A MEMBER OF THE HOUSE JUDICIARY COMMITTEE, WHERE WE WORKED VERY CLOSELY ON WHAT EVENTUALLY BECAME PUBLIC LAW 95-598, THE BANKRUPTCY REFORM ACT OF 1978.

RECOGNIZED FOR HIS EXPERTISE IN THIS FIELD, JUDGE CYR WAS ELECTED PRESIDENT OF THE NATIONAL

CONFERENCE OF BANKRUPTCY JUDGES IN 1977, AND SINCE 1970 HAS SERVED AS THE EDITOR OF THE PRESTIGIOUS AMERICAN BANKRUPTCY LAW JOURNAL. IN 1979, HE RECEIVED THE JUDGES' NATIONAL RECOGNITION AWARD. BECAUSE OF HIS PROMINENCE IN THE BANKRUPTCY FIELD, JUDGE CYR HAS FREQUENTLY BEEN CALLED UPON AS A LECTURER BY LAW SCHOOLS, BAR ASSOCIATIONS, AND OTHER ORGANIZATIONS ACROSS THE COUNTRY. HE HAS, IN ADDITION, PUBLISHED NUMEROUS THOUGHTFUL AND INCISIVE ARTICLES ON THE SUBJECT.

DURING HIS MANY YEARS AS A U.S. BANKRUPTCY COURT JUDGE, CONRAD CYR HAS DEMONSTRATED OUTSTANDING LEGAL ABILITY, INTEGRITY AND FAIRNESS.

IN ADDITION TO HIS SIGNIFICANT CONTRIBUTIONS TO THE FIELD OF BANKRUPTCY LAW, JUDGE CYR HAS ALSO SERVED AS A STANDING SPECIAL MASTER OF THE U.S. DISTRICT COURT OF MAINE, AND CHIEF JUDGE OF THE BANKRUPTCY APPELLATE PANEL OF THE DISTRICT OF MASSACHUSETTS. THROUGHOUT HIS LEGAL CAREER, JUDGE CYR HAS DISPLAYED A DEEP RESPECT FOR THE LAW AND A STEADFAST COMMITMENT TO OUR JUDICIAL SYSTEM.

I HAVE KNOW JUDGE CYR FOR MANY YEARS AND, WHEN I PRACTICED LAW IN BANGOR, MAINE, I APPEARED BEFORE HIM IN THE BANKRUPTCY COURT ON MANY OCCASIONS. I HAVE THE HIGHEST RESPECT FOR HIM AS BOTH AN INDIVIDUAL AND A JUDGE, AND BELIEVE HE IS

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EMINENTLY QUALIFIED TO SERVE ON THE U.S. DISTRICT COURT. THE JUDICIARY, THIS NATION, AND THE CITIZENS OF MAINE WILL BE WELL SERVED BY THIS APPOINTMENT.

I RESPECTFULLY URGE THIS COMMITTEE TO ACT FAVORABLY ON THE NOMINATION OF CONRAD CYR.

The CHAIRMAN. Senator Mitchell has arrived. Senator, have a seat. Do you care to make a statement now on behalf of Mr. Conrad Cyr?

STATEMENT OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Mr. Chairman, thank you for this opportunity. I have a prepared statement. I ask that it be inserted in the record in full. I will just say a few words.

The CHAIRMAN. Without objection, your entire statement will be inserted in the record following your comments.

Senator MITCHELL. I am especially pleased to be here, Mr. Chairman, because the vacancy to be filled by Judge Cyr is the district court judgeship which I held before I resigned to enter the Senate in 1980. Since then, unfortunately the position has remained vacant. As a result, the caseload has increased dramatically in the U.S. District Court for the District of Maine. The caseload now is nearly 1,000.

Although the chief judge of our district, Judge Gignoux, is one of the finest and most capable district court judges in the country, even he has not been able to keep pace with that caseload.

I am delighted that the President has sent Judge Cyr's nomination to this committee. I am pleased to recommend Judge Cyr's nomination to you, and I urge this committee to approve his nomination promptly.

Judge Cyr has been an outstanding jurist as a member of the bankruptcy bar for many years. He served as an assistant U.S.

attorney. He is nationally known for his knowledge, expertise, and judicial temperment in the bankruptcy field. I am confident that he will make a similar contribution as a member of the district court.

I have had the pleasure of knowing Judge Cyr personally for many years. In addition to his enormous legal talent, he is an outstanding person of the utmost integrity and character. I count him as a good friend.

I recommend him highly and without reservation to this committee. I hope he is approved promptly so that he can undertake his duties on the district court bench in Maine where he is very sorely needed.

The CHAIRMAN. Thank you, Senator, for your appearance here. We appreciate your being here. If you have nothing else now, you are excused.

Senator MITCHELL. Thank you, Mr. Chairman.

[The prepared statement of Senator Mitchell follows:]

STATEMENT OF SENATOR GEORGE J. MITCHELL

MR. CHAIRMAN:

I AM PLEASED THAT THE ADMINISTRATION HAS FINALLY NOMINATED JUDGE CYR AS UNITED STATES DISTRICT COURT JUDGE FOR MAINE. AS YOU MAY KNOW, I HAVE SOME FAMILIARITY WITH THE POSITION FOR WHICH JUDGE CYR HAS BEEN NOMINATED. I HAD THE GOOD FORTUNE TO SIT AS A FEDERAL JUDGE IN THE DISTRICT OF MAINE UNTIL MAY, 1980. SINCE THEN, UNFORTUNATELY, THE POSITION HAS BEEN VACANT AND THE PEOPLE OF MAINE HAVE BEEN WITHOUT THE SERVICES OF A SECOND JUDGE. ALTHOUGH JUDGE EDWARD GIGNOUX IS AN EMINENTLY QUALIFIED, CAPABLE AND HARD-WORKING JURIST, EVEN HE CANNOT KEEP UP WITH THE INCREASING CASELOAD. THERE ARE ALMOST 1,000 CIVIL AND CRIMINAL CASES PENDING IN THE DISTRICT OF MAINE. JUDGE CYR HAS HIS WORK CUT OUT FOR HIM. I KNOW THAT THE PEOPLE OF MAINE ARE ANXIOUSLY AWAITING THE CONFIRMATION OF THEIR SECOND FEDERAL JUDGE.

I AM PLEASED TO RECOMMEND THAT THIS COMMITTEE APPROVE THIS NOMINATION. JUDGE CYR'S EXPERIENCE IN THE PRACTICE OF LAW AND AS A UNITED STATES BANKRUPTCY JUDGE ARE AN EXCELLENT FOUNDATION FOR SERVICE AS A DISTRICT JUDGE. JUDGE CYR BEGAN HIS CAREER AS A PRACTICING ATTORNEY IN LIMESTONE, MAINE. HE BECAME AN ASSISTANT UNITED STATES ATTORNEY IN 1959, A POSITION HE FILLED WITH DISTINCTION.

HE HAS SERVED AS A UNITED STATES BANKRUPTCY JUDGE FOR MAINE SINCE 1961 AND HAS RECENTLY SERVED SIMULTANEOUSLY AS CHIEF JUDGE OF THE BANKRUPTCY APPELLATE LEVEL FOR THE DISTRICT OF MASSACHUSETTS. AS A BANKRUPTCY JUDGE, JUDGE CYR HAS ACHIEVED NATIONAL RECOGNITION FOR HIS INNOVATIVE, INTELLIGENT INTERPRETATIONS OF BANKRUPTCY LAW. HIS MANY PUBLISHED OPINIONS ARE OFTEN CITED BY BANKRUPTCY SCHOLARS AND JURISTS. I KNOW THAT MAINE WILL BE ABLY SERVED BY THE ELEVATION OF JUDGE CYR TO THE DISTRICT COURT AND I URGE THIS COMMITTEE TO FAVORABLY REPORT HIS NOMINATION.

The CHAIRMAN. We will have the Washington State Senators now, Senator Slade Gorton and Senator Henry M. Jackson. We are delighted to have these distinguished gentlemen here for Mr. Coughenour.

STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator GORTON. Mr. Chairman, I am delighted to introduce to this committee John Coughenour of Seattle, President Reagan's recommendation for the vacancy on the U.S. District Court for the Western District of Washington.

I will ask that the balance of my written statement be included in the record here. I will simply say to you that I could not possibly recommend anyone more highly for this position.

As the chairman and members of the committee know, the Federal district courts are among the most important in the United States because of the tremendous impact they have not only on the people of the States of the districts in which they operate but on the entire country through the enforcement of our laws.

Mr. Coughenour is a personal friend. He is a scholar. He is a member of one of the most distinguished law firms in the city of Seattle. He is one of the leading trial attorneys in the State of Washington.

As the Chair knows, I spent my 12 years before coming to the Senate as attorney general of the State of Washington. Mr. Coughenour and my office were on occasion on opposite sides of the fence. He was to my then office a formidable adversary whose arguments were characterized by their depth, their precision, and, all too often, by their efficacy as well.

He is an expert on the Federal rules of evidence, and he has taught trial practice at the University of Washington Law School.

He has a fine family and is of the highest character. I greatly and strongly recommend him to this committee.

The CHAIRMAN. Without objection, your statement will appear in the record.

[The prepared statement of Senator Gorton follows:]

PREPARED STATEMENT OF SENATOR SLADE GORTON

I AM HONORED AND DELIGHTED TO INTRODUCE TO THIS COMMITTEE, MR. JOHN C. COUGHENOUR OF SEATTLE, PRESIDENT REAGAN'S NOMINEE FOR THE UNITED STATES DISTRICT COURT OF THE WESTERN DISTRICT OF WASHINGTON STATE.

I AM HONORED BECAUSE THE POSITION TO WHICH MR. COUGHENOUR HAS BEEN NOMINATED AND IS SO ADMIRABLY SUITED, IS ONE OF PARAMOUNT IMPORTANCE BOTH LOCALLY AND NATIONALLY. FEDERAL DISTRICT COURT RULINGS, QUITE OFTEN, HAVE AN IMPACT FAR BEYOND THE COURT'S IMMEDIATE JURISDICTION, AFFECTING FUTURE GENERATIONS FOR DECADES TO COME.

I TAKE UNQUALIFIED DELIGHT IN PRESENTING MR. COUGHENOUR FOR YOUR CONSIDERATION BECAUSE, BY REASON OF PERSONAL AND PROFESSIONAL ACQUAINTANCE, I AM CONVINCED THAT HE IS AN EXCELLENT CHOICE FOR THE JOB.

JOHN IS ONE OF THE MOST RESPECTED ATTORNEYS IN THE STATE OF WASHINGTON. HE HAS COMPILED A RECORD OF PROFESSIONAL ACHIEVEMENT THAT IS DISTINGUISHED BY MANY YEARS OF PRACTICE BEFORE FEDERAL COURTS. I CAN PERSONALLY ATTEST TO JOHN'S SUPERIOR PERFORMANCE IN THIS AREA, BECAUSE DURING MY TENURE IN THE STATE ATTORNEY GENERAL'S OFFICE, WE, ON OCCASION, WERE ON THE OPPOSITE SIDES OF THE FENCE. HE WAS A FORMIDABLE ADVERSARY, WHOSE ARGUMENTS WERE CHARACTERIZED BY THEIR DEPTH, PRECISION AND EFFICACY.

HE IS ALSO A NATIONALLY ACKNOWLEDGED EXPERT ON FEDERAL RULES OF EVIDENCE AND FOR MANY YEARS TAUGHT TRIAL PRACTICE AT THE UNIVERSITY OF WASHINGTON LAW SCHOOL.

JOHN'S PROFESSIONAL CAREER HAS BEEN COMPLEMENTED AND SUPPORTED BY HIS PERSONAL LIFE. MY WIFE AND I HAVE ENJOYED OUR FRIENDSHIP WITH JOHN AND HIS WIFE GWEN AND HAVE TAKEN GREAT JOY IN WATCHING HIS FAMILY GROW AND PROSPER.

IT IS THEN, WITH GREAT PLEASURE THAT I INTRODUCE FOR YOUR CONSIDERATION, MY FRIEND AND COLLEAGUE THE HONORABLE JOHN C. COUGHENOUR.

BEST COPY AVAILABLE

The CHAIRMAN. I am going to ask the distinguished Senator from Alabama to take my place. I will be back as soon as I can. In the meantime, Senator Denton will carry on with the hearing.

Senator DENTON [acting chairman]. The Senator from Washington, Mr. Jackson?

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator JACKSON. Mr. Chairman, I am very pleased to join with my colleague, Senator Gorton, in presenting Mr. John Coughenour to the Senate Judiciary Committee.

May I begin by saying that I believe Mr. Coughenour to be a very well qualified candidate and that his nomination is truly based on merit. I am pleased to support and endorse his appointment to this important position.

Mr. Coughenour is widely recognized in the Washington legal community as an outstanding litigator. He is a partner, as mentioned by my colleague, in Bogle & Gates, one of the largest and finest law firms in the Northwest.

He has represented many of the largest companies in the Northwest in complex litigation and has served as a lead counsel in numerous State and Federal jury and nonjury trials. He has a thorough understanding of the process of litigation from its initial stages through trial and appellate courts. In recent years, his practice has been largely in Federal court, which will help him to make an immediate contribution to a district court which has been plagued by a heavy caseload.

In addition to his extensive work as a litigator, Mr. Coughenour has taught law at the University of Washington where he was a visiting professor. He taught courses in contracts and in trial practice.

Mr. Coughenour, in my view, will make a fine addition to the Federal District Court for the western district of Washington. As an outstanding trial practitioner, he is highly regarded by his peers in the bar. I am convinced that he will be even more successful on the bench. Western Washington is lucky that it will be served by an individual with the talent and experience of John Coughenour.

I, therefore, strongly urge the committee to favorably report this nomination.

May I add at the end that I want to commend my colleague for his professionalism and complete objectivity in recommending Mr. Coughenour initially.

Senator DENTON. Thank you, Senator Jackson and Senator Gorton.

[The prepared statement of Senator Jackson follows:]

STATEMENT OF SENATOR HENRY M. JACKSON
ON JOHN COUGHENOUR NOMINATION TO FEDERAL DISTRICT COURT
FOR WESTERN DISTRICT OF WASHINGTON

I am very pleased to join with Senator Gorton in presenting Mr. John C. Coughenour to the Senate Judiciary Committee.

May I begin by saying that I believe Mr. Coughenour to be a very well qualified candidate and that his nomination is truly based on merit. I am pleased to support and endorse his appointment to this important position.

Mr. Coughenour is widely recognized in the Washington legal community as an outstanding litigator. He is a partner in Bogle & Gates, one of the largest and finest law firms in the Northwest. He has represented many of the largest companies in the Northwest in complex litigation and has served as lead counsel in numerous state and federal jury and non-jury trials. He has a thorough understanding of the process of litigation from it initial stages through trial and appellate courts. In recent years his practice has been largely in federal court which will help him to make an immediate contribution to a District Court which has been plagued by a heavy caseload.

In addition to his extensive work as a litigator, Mr. Coughenour has taught law at the University of Washington where he was a Visiting Professor. He taught courses in contracts and in trial practice.

Mr. Coughenour will make a fine addition to the Federal District Court for the Western District of Washington. As an outstanding trial practioner he is highly regarded by his peers in the bar. I am convinced that he will be even more successful on the bench. Western Washington is lucky that it will be served by an individual with the talent and experience of John Coughenour.

I urge the Committee to favorably report this nomination for consideration by the full Senate.

Senator DENTON. We will now ask the three nominees from New York to come forward.

Please stand and raise you right hands. We will begin with the application of the oath. Do you solemnly swear that the statement you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Judge MINER. I do.

Mr. MCLAUGHLIN. I do.

Mr. SPRIZZO. I do.

Senator DENTON. I would like to offer you gentlemen the opportunity to introduce your families. We will start with Mr. Sprizzo.

Mr. SPRIZZO. Mr. Chairman, I do not believe any member of my family is here. I would have liked to have my mother here on this day, but she was not up to the trip. I am here by myself.

Senator DENTON. Mr. McLaughlin?

Mr. MCLAUGHLIN. They are all at school, Mr. Chairman. There is nobody with me.

Senator DENTON. Justice Miner?

Judge MINER. I have my wife, Jacqueline, and my son, Ralph, one of the four.

Senator DENTON. We will begin with questions for Justice Miner.

TESTIMONY OF ROGER J. MINER, NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF NEW YORK

Senator DENTON. Justice Miner, do you feel that State court judges are competent to hear many of the cases that are now the primary jurisdiction of the Federal courts?

Judge MINER. Yes; I certainly do. I have served as a State court judge for 5½ years. I have had the opportunity to observe the operation of the State courts. I feel that my colleagues are fully competent to undertake those matters.

Senator DENTON. What is your opinion about possibly requiring attorneys to undergo special training before being allowed to practice in Federal court?

Judge MINER. I do not know about actual training, but I think perhaps some period of apprenticeship or some opportunity to observe more senior practitioners might be a commendable thing to do.

Senator DENTON. Do you have any feelings about types of training that might be particularly efficacious?

Judge MINER. I am thinking in terms of trial matters, not only in the Federal courts but also in the State courts. It is always helpful for a young attorney to sit through some trials with a more senior attorney and pick up some practical experience in trials that way.

Senator DENTON. Do you feel there is a need for judges to assume more direct control over complex issues and complex cases in order to avoid delays and to manage such cases effectively?

Judge MINER. Yes; I think it is one of the obligations of a judge to see that the cases are moved along through the system in the most efficient manner consistent with justice to all the parties.

Senator DENTON. How far would you see that direct control going?

Judge MINER. I do not know if I would like to see the judge take charge of every minute detail. I think it could probably be in the

area of setting timeframes in pretrial orders and in establishing goals for certain phases of the trial to be completed.

Senator DENTON. Overall, what recommendations, if any, do you have for improvements in the Federal judicial system?

Judge MINER. Of course I have not been involved with the Federal judicial system yet. I really do not have any recommendations at this time. Perhaps if things go well here, I could return another year and give you a good answer to that.

Senator DENTON. Thank you, sir.

Next will be Mr. McLaughlin.

TESTIMONY OF JOSEPH M. McLAUGHLIN, NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF NEW YORK

Senator DENTON. How would you handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator or was not prepared to adequately represent the interests of his or her client?

Mr. MCLAUGHLIN. I suppose, Senator, it would depend on the age of the litigator. If it was a young litigator, as a law teacher, I would feel a great deal of sympathy. I think I would be inclined to bend a bit to help him or her. If it was an oldtimer, my instincts run the other way. My feeling would be that counsel has been picked by his client. He buttered his bread. Let him sleep with it.

Senator DENTON. Do you believe that U.S. magistrates are being properly utilized?

Mr. MCLAUGHLIN. Not really, no. I think the magistrates I have met are of rather high quality. They could be expected to assume much more responsibility than the district court judges have been willing to delegate to them.

Senator DENTON. What reason would you ascribe to that?

Mr. MCLAUGHLIN. Inertia, I suppose, Senator. Magistrates are still fairly new by judicial standards. They are only 10 or 15 years old. It takes time to break old habits. I should think that trial judges who are used to doing all the work themselves have fallen into a certain mindset that makes it difficult for them to adjust to the fact that there are new people around to help them.

Senator DENTON. Do you believe litigants in State courts receive the same level of fairness, due process, and quality of justice as do litigants in Federal courts?

Mr. MCLAUGHLIN. I certainly do. I feel very strongly about that. I have spent most of my professional career on the State side and as a student of State practice. I, for one, have never felt that our State judicial system was inferior at all to the Federal.

Senator DENTON. Would you describe the arrangements you have made to resolve the financial interests in your law firm?

Mr. MCLAUGHLIN. I have no law firm. I wish I did, but I do not have those problems.

Senator DENTON. Thank you very much, Mr. McLaughlin.

Mr. MCLAUGHLIN. Thank you.

Senator DENTON. Next is Mr. John E. Sprizzo.

TESTIMONY OF JOHN E. SPRIZZO, NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF NEW YORK

Senator DENTON. Mr. Sprizzo, what will you do as a U.S. Federal district judge to familiarize yourself and be prepared to take the heavy criminal caseload which is probably waiting for you?

Mr. SPRIZZO. Senator, I have had a considerable amount of criminal experience and I think I have some idea as to how the process works. I think that will help me expedite the processing of criminal cases. I think I have some understanding of how the Government works and how prosecutors' offices work. I think that will give me some insight as to how to move my calendar and hopefully dispose of cases.

I think one of the problems in the Federal courts is that probably too many cases get tried that should not get tried. I think I would have to be thinking in terms of methods to move my disposition rate along.

Senator DENTON. What instances can you foresee in which you would choose to disqualify yourself as a judge in a trial?

Mr. SPRIZZO. Obviously I do not think I can sit on any case in which my former law firm is involved. I understand some judges have taken a view that after 5 years or 10 years, they will, but I think I have pretty much reached a conclusion that it would be much better for me to take a much clearer rule on that, that I will not sit on any case in which my law firm is involved, or in which any former client of the firm is involved.

I think that will be a fairly hard and fast rule. There may be other cases in which obviously you might have another interest, but given the nature of my stock and security holdings, I do not anticipate any disqualifications on that ground.

Senator DENTON. In your view, what sort of guidelines should a judge follow in determining the propriety of Federal judicial intervention into State affairs?

Mr. SPRIZZO. Mr. Chairman, I have had fairly strong views for a long time on the nature of the Federal system. I do not think that Federal judges have all the wisdom of God Almighty. I think that circumstances have put them in a situation where they have been exercising jurisdiction where a lot of them would be much more comfortable not exercising jurisdiction. I have very strong views on judicial abstention in areas where the Federal courts cannot act properly or appropriately by their very nature.

Senator DENTON. I am familiar with an outfit in New York City known as Covenant House. Hence, the next question. What are your views on the laws relating to child pornography?

Mr. SPRIZZO. Senator, I have not really given that subject a great deal of thought. I am of the view that pornography is subject to regulation without violating the first amendment. I think it must be regulated under carefully drafted statutes.

I have had a considerable amount of experience with enforcing obscenity laws when I was an assistant U.S. attorney. I think one of the problems is in making judgments as to what can and cannot be prosecuted under the enunciated standards of the Supreme Court's decisions, which are difficult. They are difficult for the Supreme Court to enunciate and they are difficult for prosecutors to try to put into practice.

I think the more clearly defined the statute, the more carefully drafted the statute, the more likely that it will pass constitutional muster. I think you can regulate pornography. I think the Supreme Court has made it very clear that you can. I think the problem has been that legislators tend to draft statutes which are too broad.

My recommendation would be for more narrowly drafted statutes making it very clear what is proscribed so that you do not run into first-amendment problems.

Senator DENTON. Thank you very much, Mr. Sprizzo.

From what I have heard of the qualifications of you three gentlemen, I feel quite assured that you will be highly successful in your appointments. I want to thank you for your answers to our questions this morning.

Would Mr. Wilhoit of Kentucky come forward and remain standing to be sworn in?

Mr. Wilhoit, do you solemnly swear that the statement you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WILHOIT. I do, sir.

Senator DENTON. Do you have family you care to introduce, sir?

Mr. WILHOIT. Yes. I would like to introduce to you my wife, Jane Horton Wilhoit; my daughter, Mary Jane Wilhoit; my son, Henry Rupert Wilhoit III; and my son, William Horton Wilhoit. I have no explanation why they are not in school today that I would care to make public.

Senator DENTON. We are sure it is a proud day for your family.

TESTIMONY OF HENRY R. WILHOIT, JR., NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF KENTUCKY

Senator DENTON. How do you feel personally about your own capacity at this point in your career to carry out the very significant power and responsibility of being a Federal district judge?

Mr. WILHOIT. I think that any man who sits in this chair would have to admit to you, Senator, that he would face this responsibility with some degree of inadequacy. I would hasten to make that concession to you.

However, I feel that my experience as a trial attorney—I have limited my practice to that—has prepared me to recognize the problems of a trial judge. I feel that even though I might make mistakes, which I think any judge is going to do whether he admits it or not, my experience will permit me to carry out the duties of this office or I would not have applied.

Senator DENTON. Do you feel it should be mandatory for sitting Federal judges to have some kind of continuing legal education?

Mr. WILHOIT. Yes, sir, I certainly do.

Senator DENTON. What particular lines of education would you feel most useful?

Mr. WILHOIT. I have always attended seminars, even this year. I am a general practitioner in trial practice. My experience has been that I have never gone to a seminar and come away emptyhanded. I believe we should get our judges and our lawyers to realize that, that it is not going to be a waste of time. I would favor seminars that are readily available to the judges, especially that would deal

with cases that have just been decided. I think that would be essential. I would welcome that.

Senator DENTON. How do you regard the use of television and media coverage in the courts?

Mr. WILHOIT. The television camera in the court?

Senator DENTON. Yes, per se, as opposed to, say, artists drawing pictures. How do you view that?

Mr. WILHOIT. I would probably be bound by the existing court rule in the Eastern District of Kentucky which would not permit television coverage of the courtroom. If our chief judge, or our judges collectively—I am not quite sure how that decision has been reached—would reconsider the question and permit television cameras in the courtroom subject to appropriate guidelines, I would not oppose it.

Senator DENTON. How about your views on the laws relating to child pornography?

Mr. WILHOIT. Of course I am opposed to that. In principle, I would be very surprised if I would ever have to deal with that. I do not know of that problem existing in eastern Kentucky, but I would not want to be nailed down other than simply to say what Justice Stewart said one time: "You cannot define pornography, but I think I know it when I see it." I think I will just let it go at that.

Senator DENTON. I would have to note that I think it is a problem just about everywhere in the United States. I know that outside of Cincinnati—I do not know whether that gets into your part of Kentucky—they step over into Kentucky and indulge in enjoyments which Cincinnati was able to clean out. That is why I addressed that question to you.

Thank you very much, Mr. Wilhoit.

We would ask Mr. Cyr, of Maine, to come forward, please, and remain standing.

Raise your right hand. Do you solemnly swear that the statement you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Judge CYR. I do, sir.

Senator DENTON. Do you have family here, sir, who you care to introduce?

Judge CYR. No, I do not, sir. They are at home. My eldest son, Keefe, is a first-year student at the University of Maine. My only other son, Jeffrey, is a second-year student at Hampden Academy. My wife is a longtime homemaker who is home with the children.

[A letter from Congressman Rogers follows:]

HAROLD ROGERS
5TH DISTRICT, KENTUCKY

COMMITTEE ON
ENERGY AND COMMERCE

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House of Representatives
Washington, D.C. 20515

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September 15, 1981

Senator Strom Thurmond
Chairman, Senate Judiciary Committee
Washington, D.C. 20510

Dear Senator Thurmond:

I am writing to add my strong endorsement for Henry R. Wilhoit, Jr. for U.S. District Judge from Kentucky's Eastern District.

Mr. Wilhoit brings with him an outstanding reputation as an attorney and an impeccable character. His fellow attorneys recognized him just this past year by nominating him to serve as President of the Kentucky Bar Association--just an indication of the esteem in which he is held.

I am hopeful his confirmation hearing will proceed smoothly and quickly so Kentucky can begin to immediately benefit from his services.

Sincerely,

Hal Rogers

HAROLD ROGERS
Member of Congress

TESTIMONY OF CONRAD K. CYR, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF MAINE

Senator DENTON. Judge Cyr, are you concerned about strong advocates of public issues being appointed to the Federal bench?

Judge CYR. I am not concerned, Senator, that people who have in the past espoused strong views on important issues of the day be appointed to the judiciary provided they are mindful of the restraint and the self-imposed obligation to be judicial at all times while they conduct themselves in that important office.

I do not think we wish a lifeless judiciary, one comprised of persons who in the past have shown no interest or taken no part in the everyday affairs of a normal citizen's life. Therefore, I do not see that as disabling.

Senator DENTON. Do you believe it will be helpful to you as a judge to have a sentencing commission to establish uniformity in sentencing?

Judge CYR. Senator, when I look with some awe at the sentencing responsibility which will be mine if this committee sees fit, I must say that my first reaction is to welcome any assistance there may be in that connection.

I have read a bit about the sentencing commission experiences in various jurisdictions. Some of the data suggest that the end results, at least on a broad scale, do not differ very substantially from the experience where the individual judge retains total discretion.

However, I think it is an area where legislative prescription may very well be helpful. I personally would think that in a society as concerned as this one must be about the violence in our society and the lawlessness abroad generally it is an entirely appropriate legislative function that its views be made known in this area of sentencing.

Senator DENTON. Do you believe changes in the law should be reserved to the legislature whose members can be altered by the voters if they do not reflect the values of society?

Judge CYR. I believe, Senator, that that is one of the most fundamental principles of our democratic society. I believe that the least democratically constituted branch of our three coequal branches is the judiciary. It is the least responsive to the will of the majority at any given time. The most responsive is the legislature.

Therefore, I think the forefront of the battle to correct or adjust to the needs prompted by change in our society should be the function of the legislature and not the judiciary.

Senator DENTON. Finally, would you give your views on laws relating to child pornography?

Judge CYR. Senator, I agree with one of the earlier nominees who suggested that there are bounds which may be imposed upon what we would call the first amendment rights.

I think if we bear in mind the period of time when the framers of the Constitution and the framers of the Bill of Rights adopted these provisions, particularly that dealing with freedom of speech, that they did not do so in a vacuum. They did so, indeed, when pornography and such matters were even more of concern, not that they were more prevalent, but it would have been unthinkable in those days, in my opinion, that pornography would have been covered by the first amendment.

In my judgment, once again, I think with careful legislative proscription—not being a constitutional expert, I am in no position to state exactly what those bounds are—I am entirely satisfied that legislative control of that matter can be obtained.

Senator DENTON. Thank you very much, Judge Cyr.

Judge CYR. Thank you, Mr. CHAIRMAN.

Senator DENTON. Next will be Mr. John Coughenour of Washington, please.

Do you solemnly swear that the statement you are about to make is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COUGHENOUR. I do.

Senator DENTON. Mr. Coughenour, do you have any family members you would like to introduce?

Mr. COUGHENOUR. Yes, I do, Senator. In fact, there are not very many of my family who are not here: My wife, Gwen; my son, Jeff; my son, Douglas; our daughter, Marta; and my brother, Bill.

Senator DENTON. Thank you.

TESTIMONY OF JOHN C. COUGHENOUR, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF WASHINGTON

Senator DENTON. In your opinion, what action should be taken against an individual who has been proven to be working against the U.S. Government for purposes of espionage?

Mr. COUGHENOUR. Senator, I confess that that is not an area of the law in which I have had any experience. I have been about the business of being a trial lawyer, but I have not had any experience in that area.

I would imagine there must be some congressional mandates in that area which would, in my view, be binding upon the court. I cannot think of anything good that could be said about the subject of espionage.

Senator DENTON. How about your views on the death penalty?

Mr. COUGHENOUR. I have never opposed the death penalty. I have always felt that it was something that was appropriately the subject of legislative action, that there ought to be a way that the legislative branch could draft the death penalty bill which would pass constitutional muster.

Senator DENTON. What in your opinion is needed to speed up the disposition of Federal cases? Would it be more judges, magistrates, or changing the criminal procedures?

Mr. COUGHENOUR. In recent years, we have had experience with throwing more judges into the system and have not, at least in our district, had much success in eliminating the backlog. It seems that litigants are like hot air. They fill up about as much room as is made available. It does not seem to solve the problem. I think what we need more than anything is judges who work hard.

Senator DENTON. It has been suggested that our prisons turn prisoners into more professional criminals, that that is their function in reality. What in your opinion can or should be done to improve prisoner rehabilitation?

Mr. COUGHENOUR. I take some comfort, Senator, in the condition of the Federal prisons in this country compared with the condition of many of the State prison systems. We have had problems in our State with court-imposed prison reform. Although prisons probably do contribute to criminal behavior, they also tend to take criminals off the street.

Senator DENTON. Thank you very much, Mr. Coughenour.

Mr. COUGHENOUR. Thank you, sir.

Senator DENTON. Next is Mr. J. Paul McGrath, of New Jersey, to be Assistant Attorney General, Civil Division, Department of Justice.

Do you solemnly swear that the statement you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MCGRATH. Yes, I do, Senator.

Senator DENTON. I understand you have some family members to introduce.

Mr. MCGRATH. Yes, I do, Senator. I appreciate the opportunity to do so. My whole family is here: my wife, Honey; my older son, John; my older daughter, Trish; my younger son, David; and my youngest, Robin.

Senator DENTON. I cannot help but think, having had seven myself, that you men are well qualified for being judges and assistant attorney generals and so forth by virtue of your family experiences.

TESTIMONY OF J. PAUL McGRATH, NOMINEE, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Senator DENTON. The civil division has been criticized in recent years for its inability to resolve cases in a timely manner. Much of this criticism has arisen because of poor management within the division. Are you aware of these problems and do you have any suggestions for resolving them?

Mr. McGRATH. Yes, I am aware of these problems and criticisms. I have read transcripts of hearings that this committee has had over the last several years, and I have talked to people and read about these problems.

I think that the most important thing to recognize is that the civil division, in a way, is a very large law firm that represents the Government. The matters that we have to turn to in running the civil division go right from the nuts and bolts of the equipment, the scheduling of cases, the use of computers, on through the recruiting of lawyers, the training of lawyers, and the attempt to staff cases as best we can.

I do not think there is any real substitute for hard organizational work in those respects. I do not think there is any other way to solve the kinds of problems we have had in the past. That is the principal area that at least my initial efforts in this job would be focused on if the Senate confirms me.

Senator DENTON. One of the more important issues to the Justice Department and the Attorney General is the control of civil litigation within the Justice Department. Efforts to transfer litigation authority to the other agencies and departments are constantly being proposed.

What should be the role of the Department in controlling the litigation activity of the Federal Government?

Mr. McGRATH. Senator, I think almost without exception, except in specialty situations or except where the Congress has seen fit to transfer litigation control to agencies, that the Department of Justice should control Government litigation for a whole variety of reasons, the most important of which are efficiency and the goal of having Government litigation handled in a consistent and professional fashion.

To the extent you spread around the litigating authority, I am afraid that history has shown the result is that it produces inefficiency in handling litigation and some confusion in the eyes of the court as to what the policies of the Federal Government are.

Senator DENTON. The civil division has requested in recent years significant increases in attorney positions, but the Justice Department and the Office of Management and Budget have not granted these requests. Do you anticipate a need for staffing increases for the division in this or the next fiscal year?

Mr. McGRATH. If by this fiscal year, Senator, you mean the one starting on October 1, I think for this fiscal year we will be able to do pretty well with what we now have. I am not saying that I would not be happy with a larger allocation of attorneys, but I think we are set up pretty well to handle the workload.

In fiscal year 1983, the preliminary budget proposal that is going over to OMB will include a request for additional slots in the civil

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division. I believe those slots are going to be very badly needed because of the increase in the complexity of a lot of the litigation we are handling, particularly in our torts and commercial branches.

Senator DENTON. I understand you have been acting as head of the civil division pending Senate confirmation. You must have had occasion to interview candidates for the various deputy attorney general positions in your division.

Mr. MCGRATH. Senator, I have not actually been acting as the head. Mr. Stuart Schiffer has been acting as the head.

However, at the request of the Attorney General, I have tried to spend as much time down here as I could learning about the work of the civil division. During that time, I have talked to a number of people who might take on such jobs.

I feel very strongly that there are two principal qualifications for that job. One is, I think it almost an absolute prerequisite that a person in the deputy spot in the civil division be an experienced, effective litigator because the job of the civil division is to litigate.

Second, I feel that anybody who is going to be a deputy in the civil division, since each of them has to be responsible for the work of up to 125 lawyers, ought to be someone who has effective leadership qualities and can also be looked to by the client agencies of the civil division as an effective lawyer. I think those are the principal qualifications.

Senator DENTON. Thank you, Mr. McGrath, and for those who proceeded you. After the gentleman from New York, I would like to express my confidence that if confirmed by the Senate, you will all do outstandingly.

Thank you all.

This hearing will be in recess subject to the call of the Chair.

[Whereupon, at 3 p.m., the committee recessed, to reconvene at the call of the Chair.]

BIOGRAPHIES

JOSEPH M. MCLAUGHLIN

NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF NEW YORK

Birth: March 20, 1933, Brooklyn, N.Y.

Legal residence: New York.

Marital status: Married to Francis E. Lynch McLaughlin, 4 children.

Education: 1950-54—Fordham University B.A. degree; 1954-55, 1957-59—Fordham University School of Law, LL.B. degree; Summers of 1962, 1963 and 1964—New York University School of Law, LL.M. degree.

Bar: 1959—New York.

Military service: 1955-57—U. S. Army.

Experience: 1959-61—Cahill, Gordon & Reindel, New York, N.Y., associate; 1961 to present—Fordham University, professor of law, 1961-71; dean, 1971 to present.

Office: Fordham University School of Law, 140 W. 62nd Street, New York, N.Y., 212-841-5191.

Home: 179-15 Croydon Road, Jamaica Estates, New York 11432, 212-291-6474.

JOHN E. SPRIZZO

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF NEW YORK

Birth: December 23, 1934, Brooklyn, N.Y.

Legal residence: New York.
Marital status: Separated from Maria Conti Sprizzo, three children.
Education. 1952-56; 1959—St. John's College B.A. degree, summa cum laude; LL.B. degree.
Bar: 1960—New York.
Experience: 1959-63—U.S. Department of Justice, Criminal Division, New York City 1959-1960, Washington, D.C. (1960-1963); 1963-68—Assistant U.S. Attorney, Southern District of New York; 1968-72—Professor of law, Fordham Law School; 1970 to present— Curtis, Mallet-Prevost, Colt and Mosle.
Office: 100 Wall Street, New York, N.Y. 10005, 212-449-0831.
Home: 353 West 56th Street, New York, N.Y. 11101, 212-245-6376.

Conrad K. Cyr

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF MAINE

Birth: December 9, 1931, Limestone, Ma.
Legal residence: Maine.
Marital status: Married to Judith Ann Pirie Cyr, 2 children.
Education: 1949-53—Holy Cross College, B.S. degree, cum laude; 1953-56—Yale Law School, J.D. degree.
Bar: 1956—Maine.
Experience: 1956-59—Private practice, Limestone, Maine; 1959-61—Assistant U.S. attorney, District of Maine; 1961-62—Winchell & Cyr, Bangor, Maine; 1961 to present—United States Bankruptcy Judge, District of Maine, Bangor, Maine; 1974-76—Standing Special Master, U.S. District Court, District of Maine; 1980 to present—Chief Judge, Bankruptcy Appellate Panel, District of Massachusetts.
Office: 300 U.S. Courthouse, Bangor, Maine 04401, 207-942-7164.
Home: River Road, Winterport, Maine 04496, 207-223-4858.

John C. Coughenour

NOMINEE U.S. DISTRICT JUDGE, WESTERN DISTRICT OF WASHINGTON

Birth: July 27, 1941, Pittsburg, Kans.
Legal residence: Washington.
Marital status: Married to Gwendolyn A. Kieffaber Coughenour, 3 children.
Education: 1959-63—Kansas State College, B.S. degree; 1963-66—University of Iowa College of Law, J.D. degree.
Bar: 1966—Iowa; 1966—Washington.
Experience: 1966-70—Bogle & Gates, associate, Seattle, Wash.; 1970-73—University of Washington School of Law, professor of law, full-time (1970-1971), part-time (1971-1973). 1971 to present—Bogle & Gates, Seattle, Wash., associate (1971-72). partner (1972 to present).
Office: 2200 Bank of California Center, Seattle, Wash. 98164, 206-682-5151.
Home: 4305 N.E. 38th, Seattle, Wash. 98105.

J. Paul McGrath

NOMINEE, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Birth: September 9, 1940, Rochester, N.Y.
Legal residence: New Jersey.
Marital status: Married to Eileen R. McGrath, 4 children.
Education: 1958-62—Holy Cross College, A.B. degree; 1962-65—Harvard Law School, LL.B. degree, editor, Harvard Law Review.
Bar: 1965—New York.
Legal experience: 1965 to present—Dewey, Ballantine, Bushby, Palmer & Wood, associate (1965-73), partner (1973 to present).
Office: 140 Broadway, New York, N.Y. 10005, 212-820-1630.
Home: 256 South Mountain Avenue, Montclair, N.J. 07042, 201-746-7508.

Roger J. Miner

NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF NEW YORK

Birth	April 14, 1934	Hudson, New York.
Legal Residence	New York.	
Marital Status	Married	Jacqueline Mariani Miner 2 children.
Education	1951–1953	Columbia College.
	1953–1956	New York Law School LL.B degree, cum laude.
	1977	State University of New York External Degree Program B.S. degree.
Bar	1956	New York.
Military Service	1956–1959	United States Army Honorable discharge.
Experience	1959–1975	Miner & Miner Hudson, New York Partner.
	1961–1964	Corporation Counsel City of Hudson, New York.
	1964	Assistant District Attorney Columbia County, New York.
	1968–1974	District Attorney Columbia County, New York.
	1975–present	Justice, New York Supreme Court Third Judicial District Hudson, New York.
Office	Supreme Court Chambers 414 Union Street Hudson, New York 12534 (518) 828–4165.	
Home	RD 2 Box 110E Hudson, New York 12534 (518) 828–6909.	

Henry R. Wilhoit, Jr.

NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF KENTUCKY

Birth	February 11, 1935	Ashland Kentucky.
Legal Residence	Kentucky.	
Marital Status	Married	Jane H. Huff Wilhoit 3 children.
Education	1953–1954	Washington & Lee University.
	1954–1960	University of Kentucky LL.B degree.
Bar	1960	Kentucky.
Experience	1960–1972	Wilhoit and Wilhoit Grayson, Kentucky.
	1966–1970	County Attorney Carter County, Ky.
	1972	Diederich, Cline & Wilhoit.
	1972–present	Wilhoit & Wilhoit Grayson, Kentucky.
Office	P.O. Box 35 Grayson, Kentucky 41143 (606) 474–5091.	
Home	101 E. Third Street Grayson, Kentucky 41143 (606) 474–6274.	

CONFIRMATION HEARING ON: WILLIAM L. GARWOOD, HAYDEN WILSON HEAD, JR., JAMES R. NOWLIN, AND H. FRANKLIN WATERS

TUESDAY, OCTOBER 6, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 1:35 p.m., in room 2228, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Present: Senators Thurmond and Grassley.

Also present: Senators Tower, Bumpers, and Pryor; and Representatives Loeffler and Kazen.

Staff present: Duke Short, chief investigator; and Pamela Swanner, clerk.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY [acting chairman]. The committee meeting will come to order.

I am pleased today to have before the committee Judge William L. Garwood of Texas, who is the nominee to the position of Circuit Judge for the Fifth Circuit Court of Appeals; Mr. Hayden Wilson Head, Jr., of Texas, to be U.S. District Judge for the Southern District of Texas; Mr. James R. Nowlin, of Texas, to be U.S. District Judge for the Western District of Texas; and H. Franklin Waters, of Arkansas, to be U.S. District Judge for the Western District of Arkansas.

It is our pleasure to have with us today colleagues from the U.S. Senate and from the House of Representatives.

NOMINATION OF WILLIAM L. GARWOOD, HAYDEN WILSON HEAD, JR., AND JAMES R. NOWLIN

I would like to call first on Senator John Tower, my colleague from Texas.

STATEMENT OF HON. JOHN TOWER, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator TOWER. Thank you very much, Mr. Chairman and members of the committee.

I feel pleased and privileged to have the opportunity to present to the committee today three gentlemen from my State who have

been nominated by President Reagan for positions on the Federal judiciary.

I have always felt proud of the people that I have presented to this committee in the past who were nominees for Federal judgeships. They have all conducted themselves well, and in that tradition I am delighted to present three highly qualified people for the consideration of the committee today.

Mr. William L. Garwood is a native Texan who, since his graduation as valedictorian of the University of Texas School of Law in 1955, has been engaged in the practice of law in our State capital of Austin, Tex., apart from his service with the U.S. Army and a year recently spent as an associate justice of the Texas Supreme Court.

Mr. Garwood has been nominated to be a U.S. circuit judge for the Fifth Circuit Court of Appeals.

Mr. Hayden W. Head, Jr., is from Corpus Christi, Tex., and is a 1968 graduate of the University of Texas School of Law. He served his country as a lieutenant in the Navy for almost 3 years following his graduation and has been a successful practicing attorney in his hometown since that time.

Mr. Head has been nominated to be a U.S. District Court judge for the Southern District of Texas.

Mr. James R. Nowlin is a native of San Antonio, Tex., and likewise is a 1963 graduate of the University of Texas School of Law.

Incidentally, that is my only concern, Mr. Chairman—that I have nobody from the SMU School of Law to present to you, because that is my alma mater.

But the University of Texas Law School, I might say, is the second best law school in the State of Texas, after SMU.

Mr. Nowlin is engaged in the private practice of law in his hometown. He has served in the U.S. Army and is currently serving his seventh term as a member of the legislature of the State of Texas, and he is nominated to be a U.S. District Court judge for the Western District of Texas.

Mr. Chairman, each one of these gentlemen is highly qualified, highly respected, and well known in our State, known not only for their competence in the field of law but because they are all public spirited men who have made real contributions in other ways in the communities in which they live.

I am pleased and delighted to submit them to you for your consideration and enthusiastically recommend their favorable consideration by this committee.

Senator GRASSLEY. Thank you, Senator Tower.

I would now like to recognize my former colleague. As a Member of the House, I used to serve with Congressman Tom Loeffler.

Senator TOWER. We have also Congressman Kazen here, Mr. Chairman.

Senator GRASSLEY. Congressman Kazen, would you like to be first?

STATEMENT OF HON. ABRAHAM KAZEN, A U.S. REPRESENTATIVE FROM THE STATE OF TEXAS

Mr. KAZEN. Thank you very much, Senator.

I am here primarily on behalf of an old, old friend of mine, a friend of many years—Jim Nowlin of San Antonio.

I had the privilege quite a few years ago of presenting him to the Supreme Court, and ever since I have been very proud of the record that this young man has made as a lawyer and a practitioner in Texas.

I have known Mr. Head of Corpus Christi, who happens to be from the city of Corpus Christi in the southern district of Texas to which my home county belongs, to also be a very knowledgeable man in the law.

Mr. Chairman, this Senate cannot go wrong by the confirmation of these three gentlemen. In my opinion, they will certainly uphold the high traditions of the Federal bench, and the judiciary in this country will be in good hands when they are confirmed.

I want to associate myself with the remarks made by Senator Tower and congratulate the President of the United States and Senator Tower for presenting these names for confirmation to the Senate.

Senator GRASSLEY. Thank you, Congressman Kazen.

Congressman Loeffler?

STATEMENT OF HON. TOM LOEFFLER, A U.S. REPRESENTATIVE FROM THE STATE OF TEXAS

Mr. LOEFFLER. Thank you, Mr. Chairman and members of the committee.

First I would like to express my appreciation to the senior Senator from Texas, Senator Tower, for recommending these excellent candidates for the positions for which they are soon to be confirmed, and also to express my appreciation to the President of the United States for their nomination.

In the instance of Mr. Garwood and Mr. Head, I have enjoyed a professional as well as a personal relationship with each of them. They have excellent credentials, capabilities, qualities, and professional integrity to serve us all well on the Federal bench.

With respect to what the distinguished senior Senator from Texas has mentioned, I associate myself with his remarks, except in one instance. All three men have the outstanding characteristic of having graduated from the University of Texas Law School—clearly the best in the Nation—and therefore they will do an outstanding job based on their academic training.

There is a time when Longhorns do outdo Mustangs, and they have done it again. [Laughter.]

With respect to Mr. Nowlin, it is indeed a great personal pleasure for me to join my distinguished senior Senator and my colleague from San Antonio, Congressman Chick Kazen to express my enthusiastic support for him. This stems from my strong belief that Mr. Nowlin possesses all the qualities necessary for superlative service as a Federal judge.

Jim is the son of a prominent legal family in San Antonio, where his father was known as the "lawyer's lawyer." He is a man of the highest character and integrity.

Jim has served in the State legislature for seven sessions, is dean of the Bexar County delegation, and is admired by his colleagues on both sides of the political aisle.

This is best exemplified by the fact that the speaker of the Texas House—a Democrat—appointed Jim—a Republican--as chairman of the local and consent calendars committee—a post of tremendous legislative responsibility, which he currently administers in a very fair and honorable way.

I have followed Jim's career with interest and have always been impressed by his independent thinking, coupled with his ability and willingness to listen and to reason with his colleagues.

He has been a strong proponent of the thesis that members of the Federal bench should be strict constructionists of our laws and the Constitution, always maintaining that only legislatures make the law. This is something that I learned in my past experience in serving as a staff aide to Senator Tower, which to me is one of the most important characteristics that anyone serving on the Federal bench should have.

I believe Jim will be a credit to the Federal bench, to the State of Texas, and to our Nation, and I urge the committee's favorable consideration of his nomination, as well as Mr. Garwood's and Mr. Head's.

I thank the chairman for his indulgence and look forward to being able, in the very near future; to greet each of the three nominees as "Your Honor." Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you.

Congressman Kazen?

Mr. KAZEN. Mr. Chairman, on my way over here I ran into Congressman Gonzales from San Antonio, and he wanted me to tell this committee that he is very highly supportive of the confirmation of Jim Nowlin to the post of U.S. district judge.

Senator GRASSLEY. Thank you, Senator Tower and members of the congressional delegation.

NOMINATION OF H. FRANKLIN WATERS

At this point we would like to ask the nominees from Texas to leave the witness table so that we may introduce Senator Bumpers, Senator Pryor, and their nominee, because of the urgent work that Senator Pryor and Senator Bumpers are involved in.

Senator Tower?

Senator TOWER. Mr. Chairman, let me simply say that I have another responsibility that I must attend to and therefore will not be able to remain for the hearing, but I have every confidence that the nominees that I have presented will give an excellent account of themselves and do not require my presence here. I thank you for giving me the opportunity to appear.

I might ask that my remarks about the relative merits of the SMU and Texas Law Schools be stricken from the record. There are far more graduates from the University of Texas than there are from SMU, and they all vote. [Laughter.]

Senator GRASSLEY. Without objection, it is so ordered.

Senator Bumpers and Senator Pryor?

Mr. H. Franklin Waters is the nominee to be a U.S. district judge for the Western District of Arkansas.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. Mr. Chairman, thank you very much for permitting Senator Pryor and me to be here this afternoon.

It goes without saying that, when two Democratic Senators come over to express in extremely complimentary and in laudatory terms the intellectual capacity and the total integrity of the nominee of this administration, he is immensely well qualified.

H. Franklin Waters has been a friend of mine for many, many years. When I was a country lawyer practicing law in the little community of Charleston, Ark., our paths crossed in a lawsuit. I forget how it came out. He probably won it.

In addition to that, he grew up in a very small community—even smaller than the one I grew up in—and I know that getting an education was a struggle for him. It did not come easily because of his financial standing.

He graduated from the University of Arkansas, and received his law degree from St. Louis University. He received it by going to night school for 5 years. Out of a beginning class of 40, only 12 finished.

Franklin is a member of one of the most highly respected firms in Arkansas. I know virtually all of the members of the firm, and I know the esteem in which he is held and the admiration and respect that the members of the firm and the other members of the bar have for him.

There is really no greater compliment to any lawyer than to say that he is a lawyer's lawyer, and that he ranks very high among his peers in almost every quality and characteristic you could name.

I want to compliment the President for his very astute nomination of Franklin Waters. I can assure you that this committee will never have the opportunity to consider a more noncontroversial nominee, a person who is as universally respected and admired in the State of Arkansas among his peers, than H. Franklin Waters.

Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator Bumpers.

Senator Pryor?

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

I would like to say that I do not know whether Mr. Waters tried that lawsuit in Senator Bumpers' hometown or whether Senator Bumpers tried that suit in Mr. Waters' hometown; but if he tried it in Senator Bumpers' hometown he had to try it with Senator Bumpers because Senator Bumpers was the only lawyer in town.

We do have today, Mr. Chairman, a splendid man to recommend to this committee most highly today. It is an honor that I share with my senior colleague, Senator Bumpers, when we come before you today.

Franklin Waters has distinguished himself as an outstanding member of the Arkansas legal community. He is a dedicated citizen of the Springdale area. He is known as an attorney of exceptional intelligence and integrity, and his past 15 years in the practice of

law with the firm of Blair, Cypert, Waters & Roy I think have illustrated his abilities beyond question.

His colleagues in the legal profession have recognized his leadership abilities by electing him president of the Washington County Bar Association; and many, many civic honors have come his way because of his dedication.

I do believe that Frank Waters will bring the same commitment to the Federal judiciary that he has to the legal profession and to his community.

Mr. Chairman, it is a privilege and a high honor to recommend this intelligent, very dedicated, and extremely compassionate man for this high position.

Senator GRASSLEY. Thank you, Senator Pryor.

Does either one of you have any more to say? Otherwise, we will go immediately to the swearing in of the nominees.

Senator BUMPERS. Mr. Chairman, I ask unanimous consent that my formal statement be entered in the record.

Senator GRASSLEY. Without objection, it is so ordered.

[The statements of Senators Bumpers and Pryor follow:]

INTRODUCTION OF H. FRANKLIN WATERS

BY SENATOR DALE BUMPERS

MR. CHAIRMAN, I AM PLEASED TO HAVE THE OPPORTUNITY TO INTRODUCE TO THIS COMMITTEE H. FRANKLIN WATERS, WHOM THE PRESIDENT HAS NOMINATED FOR THE POSITION OF UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS.

FRANKLIN WATERS WAS BORN IN THE RURAL ARKANSAS TOWN OF HACKETT. HE IS A GRADUATE OF THE UNIVERSITY OF ARKANSAS, AND RECEIVED HIS LAW DEGREE FROM ST. LOUIS UNIVERSITY. SINCE 1967, HE HAS BEEN A PARTNER IN THE HIGHLY-RESPECTED LAW FIRM OF BLAIR, CYPERT, WATERS & ROY IN SPRINGDALE, ARKANSAS. HE AND HIS WIFE, JANIE, HAVE THREE CHILDREN.

I WOULD LIKE TO COMMEND PRESIDENT REAGAN FOR NOMINATING FRANK WATERS. HE IS A DISTINGUISHED ARKANSAS ATTORNEY WHO ENJOYS GREAT RESPECT IN HIS COMMUNITY AND IN LEGAL CIRCLES, AND I KNOW OF NO HIGHER ACCOLADE THAT CAN BE BESTOWED ON A NOMINEE. I AM CONFIDENT THAT THIS COMMITTEE WILL ACT QUICKLY AND FAVORABLY ON HIS NOMINATION, AND I WISH HIM WELL IN THE MONTHS AND YEARS AHEAD.

STATEMENT OF SENATOR DAVID PRYOR

H. FRANKLIN WATERS

U.S. DISTRICT JUDGE, WESTERN DISTRICT OF ARKANSAS

Mr. Chairman, it is an honor and a pleasure to introduce Mr. Frank Waters to the members of the Judiciary Committee and recommend his confirmation as United States District Judge for the Western District of Arkansas.

I am proud to speak in Frank Waters' behalf today. He has distinguished himself as an outstanding member of the Arkansas legal community and as a dedicated citizen of the Springdale community. He is known as a lawyer of exceptional intelligence and integrity. His past fifteen years in the practice of law with the firm of Blair, Cypert, Waters & Roy have illustrated his abilities without question. His colleagues in the legal profession have also recognized his leadership abilities by electing him president of the Washington County Bar Association.

Mr. Chairman, I would also like to bring to the Committee's attention Frank Waters' involvement in community affairs. His efforts have earned him the respect of Springdale community leaders and citizens alike. He has served, since 1979, as a member of the Springdale School Board. He is also a member and past president of the Board of Governors of the Washington Regional Medical Center and the Springdale Rotary Club. Other community activities include the past directorships of the Springdale Chamber of Commerce and the Springdale United Fund.

I believe that Frank Waters will bring the same commitment to the federal judiciary that he has to the legal profession and his community. It is a privilege and a high honor to recommend the confirmation of this intelligent, very dedicated, and extremely compassionate man.

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Senator GRASSLEY. If you are busy, you may feel free to go; or do you wish to stay?

Senator BUMPERS. We both need to get away, Mr. Chairman. We thank you very much for taking us so that we could go back to our work.

Senator GRASSLEY. Mr. Waters, would you raise your right hand?

Do you solemnly swear that the statement you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WATERS. I do.

Senator GRASSLEY. Mr. Waters, are there any members of your family that you would like to introduce?

TESTIMONY OF H. FRANKLIN WATERS, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF ARKANSAS

Mr. WATERS. Thank you, Mr. Chairman.

No, sir; I have some children who are still in school, and they are all in school. It was impossible for them to come today. They wanted to very much but could not, and I am sorry about that.

Senator GRASSLEY. Mr. Waters, our first question is: What are you doing to familiarize and to prepare yourself to handle the heavy criminal caseload which is probably waiting for you?

Mr. WATERS. I have received already, as I think most nominees do, from the Federal Judicial Center a considerable amount of educational material. A lot of that is criminal-practice oriented. I have already started studying that.

If I am confirmed I intend, between now really and the time that I am able to be sworn in, to spend some time with one or more of the district judges in Little Rock or Fort Smith to familiarize myself with the criminal practice. That is an area that I recognize I need to do some work on, and I intend to very extensively.

Senator GRASSLEY. What, if any, recommendations do you have in the area of prison and sentencing reform?

Mr. WATERS. I am not sure that I have any real good recommendations. My inclination is to say that there have been many problems—and I think Arkansas is no exception—in the area of prison problems. We have—as many, many areas of the country do—an overcrowding of the prisons. We are running out of room; we have run out of room.

Senator THURMOND. Mr. Chairman, I have a bill coming up on the floor of the Senate in just about 7 minutes, but I just wanted to express my interest in these nominations and wish to assure your nominees that they will receive prompt consideration.

Thank you for your presence here, and I hope everything will go well with you.

Mr. WATERS. Thank you, Mr. Chairman.

In the area of sentencing I think we have to do something in this country to see that sentences are carried out. I am afraid that, as I said, many areas of the country have run out of room. I am awfully afraid there are going to have to be some expanded facilities, particularly in the State of Arkansas.

Senator GRASSLEY. What is your opinion on requiring attorneys to undergo special training before being allowed to practice in the Federal courts?

Mr. WATERS. I am not at all sure that that is not a very good idea. One of the, I guess petty, gripes that I have had is that for the last several years I have seen many young lawyers who I do not think really were prepared to practice law.

I suppose that happens to all of us as we get older no matter what profession we are in, but it is something I had never thought of and did not know there was any move afoot. But I am not at all sure it would not be a good idea, Senator.

Senator GRASSLEY. Welfare fraud is becoming more prevalent. What, if any, recommendations do you have to alleviate this problem?

Mr. WATERS. That is an area where I think the law very badly needs to be enforced very strictly. I think that if persons are guilty of welfare fraud that is a crime that ought to be punished, and I think that that should be done, and I hope it will be.

Senator GRASSLEY. Are you referring to jail sentences or any sort of punishment of that nature?

Mr. WATERS. Yes, sir; I think if that is necessary, if the law permits that—and I am sure it does in some of the more severe cases—that may be necessary.

Senator GRASSLEY. Mr. Waters, that is all of the questions that I or the committee have; but let me say that, as is customary, sometimes members might have questions in writing that they would submit to you. You might be prepared for that. I do not know how often that happens, but it is customary.

Mr. WATERS. Yes, sir.

Senator GRASSLEY. We thank you for your appearance, for your testimony, and for your answers to our questions; and we are sure that if you are confirmed you will make a good judge.

Mr. WATERS. Thank you very much, Senator.

Senator GRASSLEY. I would like to now call all three nominees from the State of Texas to come back to the witness table together.

Would each one of you raise your right hand?

Do you solemnly swear that the statement you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GARWOOD. I do.

Mr. HEAD. I do.

Mr. NOWLIN. I do.

Senator GRASSLEY. Individually, I would like to ask you if you have members of your family that you would like to introduce.

TESTIMONY OF HAYDEN WILSON HEAD, JR., NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF TEXAS

Mr. HEAD. Thank you, Mr. Chairman.

I am Hayden Head, Jr., from Corpus Christi.

May I present my wife, Barbara?

Senator GRASSLEY. Good morning, Barbara.

Mr. HEAD. My two children are at home.

Senator GRASSLEY. Thank you.

Mr. Nowlin, do you have family here?

TESTIMONY OF JAMES R. NOWLIN, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF TEXAS

Mr. NOWLIN. Senator, I do not have family here; but I would like to introduce my guests from San Antonio from my staff and friends: First of all, U.S. District Judge H. F. Garcia, who is here with me from San Antonio and the Western District; Mr. Gary Zausmer, who is on my staff; and Michael Burk, who is on my legislative staff.

Senator GRASSLEY. Thank you.

Mr. Garwood, do you have family or friends you would like to introduce?

TESTIMONY OF WILLIAM L. GARWOOD, NOMINEE, CIRCUIT JUDGE, FIFTH CIRCUIT COURT OF APPEALS

Mr. GARWOOD. Yes; I am Will Garwood, Mr. Chairman. I would like to introduce my mother, Mrs. W. St. John Garwood; my daughter, Mary Garwood; my niece, Susan Garwood; my sister-in-law, Sandy Haffler; and sister-in-law, Joan Harris, all of whom I am proud to have here with me today.

Senator GRASSLEY. Thank you.

Judge Garwood, I would like to ask you questions first.

An article which appeared in the Houston Chronicle last year stated that your stockholdings kept you from deciding many cases, thus increasing the workload for other judges.

Would you give the committee your comments on this article and advise us as to what actions you will take to prevent any possible conflicts of interest?

Mr. GARWOOD. Yes, Mr. Chairman.

I am not familiar with the precise article to which you refer, but there were a number of such articles which appeared in connection with my campaign to retain my seat on the Texas Supreme Court. These were reports of statements made by my opponent in the campaign and were not statements by the writers of the articles. I think they are grossly incorrect and, as a matter of fact, do not reflect the truth.

The charges made by my opponent in that connection were looked into by a group of distinguished Texas lawyers, including the former dean of the University of Texas Law School, the president of Baylor University, also a former justice of the Supreme Court of Texas, a former chief justice of the Supreme Court of Texas, a former president of the American Bar Association, and another former justice of the Texas Supreme Court.

On their examination of these charges they found them to be utterly without merit. The media which investigated these charges likewise found them to be without merit, as my election was endorsed by almost every major metropolitan daily in the State of Texas—those who endorsed Democratic candidates as well as those who endorsed Republican candidates.

While I am familiar with the general themes apparently referenced in the article, because these were charges that my opponent made, they do not reflect the truth, and I think they have been thoroughly investigated and found to be incorrect.

With respect to stockholdings, to minimize any questions in this regard I have divested myself of nearly half the number of differ-

ent corporations in which I have owned stock, and I do not believe that this would be a problem.

Of course, should any case arise in which a party were a corporation in which I owned stock, I would naturally excuse myself, as I always did when I was on the Texas Supreme Court.

Senator GRASSLEY. Could you give us some idea of what percentage of the cases that you had to excuse yourself from because of possible conflict?

Mr. GARWOOD. Yes, Mr. Chairman; it was less than 2 percent.

Senator GRASSLEY. Please comment, if you would, Judge Garwood, on your involvement in the case of *Riverside National Bank* v. *Lewis*. Do you now or have you ever held any stock in the Riverside National Bank?

Mr. GARWOOD. Mr. Chairman, I do not now and I never have at any time held any stock or interest whatsoever in the Riverside National Bank or any corporation with which it was or is affiliated.

The *Riverside National Bank* case was one which came to the Texas Supreme Court before I was on the court. It was argued before the Texas Supreme Court prior to my going on the court.

However, I followed the practice when I went on the court of not participating in the decision of any case which had been argued before I got there—that is to say, a case in which I had not had the opportunity to hear the argument.

A 4 to 4 tie developed on the court. I was the ninth justice and was not participating because I had not heard the argument. So the case was scheduled for reargument. I participated in the decision following reargument, and I think that I did so with entire propriety because I had no interest whatever in the Riverside National Bank.

In connection with my election campaign my opponent charged that this was wrong because I owned stock in another bank located in another county which had absolutely nothing to do with the Riverside National Bank.

Before I went on the Supreme Court I sought the advice of former Supreme Court Justice Robert W. Calvert, who served on our Supreme Court for 20 years, 10 as chief justice. Amongst other things, I particularly asked Judge Calvert: If, for example, I owned stock in a bank and a suit involving another bank came before the court, should I disqualify myself in a case of that nature or not?

Judge Calvert said I should not, indeed could not, disqualify myself and had a duty to participate in that kind of case, and I followed his advice, and I believe correctly so.

That is reflected in correspondence between Judge Calvert and myself which I have furnished to the Senate committee staff and ask that it be made a part of the record at this time, Mr. Chairman.

Senator GRASSLEY. We have that, and without objection it will be made a part of the record.

[Questions of Senator Biden and the letters referred to above follow:]

Senator Biden's Questions to Judge Garwood

Question. Does any member of your immediate family now own or did they at any time in the past own, any interest in the Riverside National Bank mentioned in your testimony before the committee?

Answer. No.

Question. Did the other bank to which you referred in your testimony have any immediate, direct interest in the subject matter of the litigation involving the Riverside National Bank?

Answer. No. Like any other bank, savings and loan institution, or any person or business ever lending money, it could potentially be affected by the decision, but so far as I know or believe it had no other interest whatever. The same is true as to two other banks in which I owned stock and all of which stock I disposed of prior to my taking any action in the Riverside National Bank case.

87-997 O—82——7

GRAVES, DOUGHERTY, HEARON, MOODY & GARWOOD

2300 AUSTIN NATIONAL BANK TOWER
POST OFFICE BOX 98
AUSTIN, TEXAS 78767
512/478-6431

November 5, 1979

Honorable Robert W. Calvert
McGinnis, Lochridge & Kilgore
Fifth Floor, Texas State Bank Building
900 Congress Avenue
Austin, Texas 78701

Dear Judge Calvert:

I certainly appreciate your and your firm's willingness, at my request, to be my personal legal counsel in reference to possible legal questions in the general areas of conflicts of interest, financial disclosure, election law compliance and related fields, which might arise on my taking office as a justice of the Texas Supreme Court. It is understood, of course, that this will be on the basis of your customary charges.

As general background, let me outline something about my family. My wife, Merle, and I have two children, neither having been married and each living at home and supported by me. My daughter, Mary, is a senior at Austin High School and will be 18 in April 1980; my son, Will Jr., will be 23 in January 1980 and is a first year student at the University of Texas Law School.

Personal Finances/Conflicts of interest

Stocks

With respect to personal finances, I will first mention corporate stock ownership. I exclude from this discussion stock in country clubs and also exclude stock in certain mutual funds (some owned by me and some by my wife and children) which I am now selling (with the result that none of us will own any mutual fund stock) and one or two other stocks we are now selling. I own, as my separate property and in my own name, stock in some 21 different corporations; my wife owns as her separate property and in her name stock in some 11 of these same 21 corporations plus stock in a 12th corporation (owned by none of the rest of us); my son owns stock in 8 of these same 21 corporations plus stock in a 9th (owned by none of the rest of us); my daughter owns stock in 5 of these same

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21 corporations plus stock in a 6th (owned by none of the rest of us); some of the stock of my son and daughter is in my name as custodian for one or the other of them under the Texas gifts to Minors Act, and some is in their own name. Between the four of us there are then some 24 different corporations in which stock is owned. A listing of these is enclosed.

Of these 24, 19 are traded on the NYSE, 2 are traded nationally OTC (WSJ quotes) and 3 are "local" (Austin Bancshares, Northwest Savings Ass'n, and Sea Arama, Inc.). In only one of these corporations is the combined ownership of the 4 of us as much as 1% of the outstanding stock (Austin Bancshares, where I own 22,038 shares and my children 2,000 each and there are 2.411 million shares outstanding); in only one other (Anderson Clayton) are the total shares thus owned as much as 1/10th of 1% (Anderson Clayton, a little less than 1/5th of 1%) of the shares outstanding. Most are less than 1/100th of 1% of the shares outstanding. Some of the latter holdings might, however, be regarded as "large" in an absolute sense (in Texaco the 4 of us together own about 7,500 shares which at a recent $30 per share price would be worth about $225,000; the 7,500 shares, however, represent less than 3/1,000ths of 1% of the some 271 million Texaco shares outstanding).

Laying aside Anderson Clayton and Austin Bancshares (as I would in all events disqualify myself in any case in which either were a party), in none of these corporations could I in any reasonable way be said to be a "control" person.

While the stocks are certainly not fully diversified, on the other hand they are not, it seems to me, overwhelming concentrated in a single industry.

Some questions in this regard.

Question 1. Is this too many stocks, or too large a dollar value in stocks, for a judge to own, so that, regardless of proper disqualification in particular cases, I should nevertheless either (i) reduce the number of different stocks held (so as to reduce the number of potential disqualifications or for some other reason), or (ii) reduce the dollar amount invested in stocks (say shifting to CDs or government bonds or real estate; so as to reduce a theoretical "pro-business" bias or for some other reason), or (iii) both.

2. Should I disqualify myself in cases affecting one or more industry classifications (e.g., banking, oil) because I own stock in one or more companies normally considered as being in such general area of business, even though no company in which I own stock is a party (or a bound member of the "class" in a "class action") to the suit?

3. What rule should I follow as to disqualification in a case involving one of the 24 companies listed (other than Anderson Clayton or Austin Bancshares)? Is there any rule of "de minimis"? For example, the 220 shares of Houston Industries (HL&P) owned by the 4 of us are worth less than $7,000 and represent less than 1/1,000th of 1% of the 33 million shares outstanding. Should I disqualify myself in a case in which Houston Industries is a party? What about, for example, Texaco (our stock is worth about $225,000 but represents less than 3/1,000th of 1% of outstanding shares)? What about a case a party to which is a corporation in which my son, but none of the rest of us, owns stock? And, the same question regarding my daughter and my wife each.

4. Should I use a "bind trust" for all or any of my (or my wife's or children's) assets?

Bonds, Debts, other assets.

Other than a few Anderson Clayton debentures, none of us owns any corporate or U.S.Government bonds. My wife and I each own some municipal bonds, but these are all issued by non-Texas municipalities except for $25,000 of Dallas County bonds owned by my wife and a $5,000 Edna ISD bond I own (also, some of the trusts discussed below have various municipal bonds, including quite a few from Texas). We all have savings accounts and checking accounts at the Austin National Bank and my son and I have CDs there. I have small savings accounts (less than $2,000) at Northwest Savings and at First Texas, our home mortgage is with First Texas and I owe a $5,000 note at the Austin National Bank. My wife has (as her separate property) various small fractional non-operating interests in mineral properties out of Texas.

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Election law compliance

I would also appreciate advice as to election law compliance. What kind of announcement makes me a candidate? When do I have to "appoint" whom (e.g., a treasurer or committee)? When do I have to report what kind of expenses or donations? What kind of expenses (e.g., long distance calls saying I expect to run and hope for support) made when (e.g., before taking office or after, etc.) have to be disclosed, and when? Is there some kind of exemption for office holders? When do I have to file a general (not just campaign) financial disclosure form? Any other general compliance advice and suggestions in this area would be greatly appreciated.

With appreciation and thanks for your good help and counsel,

Sincerely,

William L. Garwood

WLG:mb

encls

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JULIAN LOCKWOOD
JAMES R. RAUP
DI ANN JOHNSTON

November 27, 1979

Honorable William L. Garwood
Associate Justice, The Supreme Court of Texas
P. O. Box 12248, Capitol Station
Austin, Texas 78711

Dear Justice Garwood:

I respond to your letter of November 5, 1979 in which you requested that I answer 19 questions contained in the letter concerning disqualification and ethical matters you may encounter as a Supreme Court Justice in connection with your financial and business investments and associations.

In this letter I shall answer your questions by the same numbers by which they were listed in your letter. I will not repeat the questions, as that would extend this response beyond reasonable bounds. However, in order that you may have the questions and the answers before you I attach a xerox copy of your letter of November 5th.

My answers are primarily related to and founded upon Canons 3 and 5 of the Code of Judicial Conduct adopted by the Supreme Court and made effective September 1, 1974, which Code was amended November 9, 1976. Accompanying this letter is a brief analysis of the relevant provisions of the Code.

Question 1.

Answer: No.

(i) Reduction of the number of stocks owned so as to reduce the number of potential disqualifications is probably desirable if it can be done without substantial economic loss, but I do not see it as either required or urgent.

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See Canon 5C(3): "A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification."

(ii) Reduction of the dollar amount invested in stocks should not present a problem. Wealth does not necessarily imply a "pro-business" bias any more than lack of wealth implies an "anti-business" prejudice. Judges of integrity will not permit either condition to control or affect their decisions, knowingly or unknowingly, and one should not assume that a large percentage of the lawyers, litigants or the public generally will believe it does.

(iii) Whether you do either, or both, has to be strictly a personal decision. If by doing one or the other, you would be more comfortable in your position, or would feel more at ease in making your decisions, I suggest a reduction in the number of stocks.

Question 2.

Answer: No. Neither Art. 5, Section 11 of the Constitution, art. 25 of the statutes, nor Canon 3, Subdivision C of the Code of Judicial Conduct, as analyzed in the accompanying brief requires disqualification in these cases.

Question 3.

Answer: You should disqualify in any case in which any one of the 24 companies is a party. As provided in Canon 3 C 3(b), you should disqualify in any case wherein you have a financial interest in a party to the suit, whether the interest be legal or equitable, and however small. There is no "de minimis" rule where a financial interest in a private corporation exists. The same provision of the Canon requires you to disqualify if your wife or daughter has a financial interest but not when your adult son has one.

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lawyer in the matter in controversy, or one of your former associates must have "served during such association as a lawyer concerning the matter."

I respectfully suggest that if a case, in which your former firm is counsel, falls to you for opinion writing, you exchange cases with another justice and thus eliminate any question of your controlling a decision in your firm's favor.

Your letter also expressed a need for election law advice. This matter has been referred to Gaylord Armstrong of this law firm who specializes in that area of the law. I am advised that he is in process of furnishing you the information you require.

If I can be of assistance at any time in the future, feel free to call upon me.

Respectfully yours,

Robert W. Calvert

Robert W. Calvert

RWC:pd
Enclosures

Senator GRASSLEY. Judge Garwood, obviously your experience on the Texas Supreme Court as an associate justice will cause you to bring with you many qualifications for helping you meet the challenges of the Federal bench.

However, in addition to all that experience you bring with you, are there any specific actions you might take that will assist in making you a better circuit court judge?

Mr. GARWOOD. Yes, Mr. Chairman; there are a good many, and there are many things I think that I should and will be studying, especially in regard to Federal procedure and in regard to Federal criminal law.

Fortunately, the Federal Judicial Center and the administrative office of the U.S. Courts furnish judicial nominees with a list of some material they have available; and some of the material has already actually been furnished. I have started to look at it and will continue to study it.

Perhaps I will be able to attend some of the College of the Judiciary courses in Las Vegas, which I understand has been a very successful institution.

I think these are some of the things that I can do to more thoroughly familiarize myself with the law that will come before me on the fifth circuit if I should be fortunate enough to be confirmed by the Senate.

Senator GRASSLEY. Thank you, Judge Garwood.

I now have questions for Mr. Nowlin.

Mr. Nowlin, you have served several terms in the Texas State Legislature; and I am sure you have at times been concerned about the propriety of Federal judicial intervention in State affairs. Are there any guidelines that you might follow as a district court judge concerning this area of government?

Mr. NOWLIN. Mr. Chairman, I have been concerned on probably more than three or four occasions about Federal or even at times

State judicial interference with what I consider primarily legislative functions.

The guideline which I would follow would be that I would hesitate—and I believe that any Federal judge should hesitate—to interfere with the activities and responsibilities of elected legislative officials at both the State level and the congressional level and to give every opportunity for the legislative branch of government at the State and Federal levels to solve the problems for which their members were elected.

It is my view that judges are not properly prepared to solve the kind of problems and at least administer the solution to the problems that are basically legislative.

Senator GRASSLEY. Are you concerned about strong advocates of public issues being appointed to the Federal bench?

Mr. NOWLIN. Yes, sir; I am concerned about that, in that it has been my view that the judges in the Federal judiciary at least are not policymakers and should not be policymakers—that is, that position should be left to elected officials of the legislative branch.

It will be rare, if at any time, that I will consider myself a policymaker or a proponent of any public issue as a district judge.

Senator GRASSLEY. Mr. Nowlin, do you believe it would be helpful to you as a judge to have a sentencing commission to establish uniformity in sentencing?

Mr. NOWLIN. Yes, Mr. Chairman; I think it might be helpful. However, I believe that there should be some leeway left with the judiciary to assess the type of punishment which the judge in a particular situation feels is suitable for the particular offence. I do not think the court should necessarily be bound by any set of guidelines established by any sentencing commission, but to use them as guidelines I think it would be helpful.

Senator GRASSLEY. What is your view of the death penalty?

Mr. NOWLIN. Mr. Chairman, I am supportive of the death penalty for certain extreme cases of criminal activity. I have no objection to it in those extreme cases. I think it is a worthwhile deterrent to certain criminal offenses in extreme situations.

Senator GRASSLEY. Would you give us some fairly certain ideas of what cases ought to be included or not included?

Mr. NOWLIN. Since it is my understanding that there is no Federal death penalty at the present time—there are appeals and stay requests from State death penalty decisions—it would be my view that for such activities as the killing or murder of prison guards or prison officials the death penalty can serve as a deterrent in that area, for certain extreme and extraordinary cases of murder which include malice and intent, and perhaps for certain cases of treason against the United States.

Senator GRASSLEY. Thank you, Mr. Nowlin.

We will now turn to Mr. Head.

Do you think your relative lack of trial experience will in any way interfere with your assuming command of the vigorous duties placed upon a trial judge?

Mr. HEAD. Senator, I certainly do not.

The first 4 years of my practice I spent trying cases in the Federal system in the military courts of the U.S. Navy. Since that time I have had an active practice in administrative proceedings in

the State of Texas, in which the rules of evidence and procedure had been formalized long before and well since they were many years ago. I think that prepares me.

In addition to that, I think the record will reflect that I have the strong support of trial practitioners in the Southern District of Texas, especially in Corpus Christi and the surrounding communities, in the lawyers that know me.

Senator GRASSLEY. How would you handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator or was not prepared to adequately represent the interests of his or her client?

Mr. HEAD. Senator, I think that would depend on the degree of inadequacy and the circumstances of the proceeding.

If it were an appointed criminal case, I would have the ability to appoint additional counsel. If it was an aggravated case, I believe it would be appropriate to recess the proceedings to enable the counsel for the defendant to further prepare himself.

Senator GRASSLEY. What actions, in your professional or personal life, evidence your concern for equal justice for all citizens?

Mr. HEAD. I have represented, both voluntarily and by appointment of the court, indigents and people who were not able to plead their cases before the courts; I have participated as a member of a statewide bar committee in a project in a statewide bar committee entitled "Legal Services to the Poor in Civil Matters."

I have, on a personal note, encouraged and assisted a former member of our law firm staff—a young lady who is now attending a law school in the State of Texas—to go to school and law school and to participate as a lawyer in our society.

Senator GRASSLEY. What are your views on the laws relating to child pornography? Should they be more vigorously investigated, or is this an area where sufficient action is presently being taken?

Mr. HEAD. Senator, I am not familiar with the extent of the enforcement of child pornography laws across the Nation. It is my personal feeling that we have a pretty good record in my community.

Certainly all the laws that relate to the protection of children should be strictly enforced and should be vigorously enforced and pursued. That specifically would include child pornography.

Senator GRASSLEY. That is all the questions I have, although you probably heard me say to the previous nominee from Arkansas that you might expect questions from other members of the committee. If you do, they would be in writing, and it would be standard procedure for you to respond in writing for the record.

Senator Bentsen is sorry he was unable to attend, but we did, receive his statements which we will enter into the record at this point.

[The prepared statements of Senator Bentsen follow:]

PREPARED STATEMENT OF SENATOR LLOYD BENTSEN

MR. CHAIRMAN, IT IS AN HONOR TO TAKE THIS OPPORTUNITY TO EXPRESS MY SUPPORT FOR THE NOMINATION OF WILLIAM L. GARWOOD TO BE A UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT.

JUDGE GARWOOD BRINGS WITH HIM TO THE APPEALS BENCH AN EXCEPTIONAL BACKGROUND AS A MEMBER OF THE TEXAS JUDICIARY AND A DIVERSE INVOLVEMENT IN CIVIL AFFAIRS.

HE RECEIVED HIS LAW DEGREE FROM THE UNIVERSITY OF TEXAS SCHOOL OF LAW IN MAY OF 1955. HE WAS IMMEDIATELY EXPOSED TO THE JUDICIAL SYSTEM AS A LAW CLERK FOR THE TEXAS COURT OF APPEALS. THAT EXPERIENCE WAS THE START OF A LONG AND DISTINGUISHED CAREER FOR JUDGE GARWOOD WHICH RANGED FROM SERVING HIS COUNTRY AS A MEMBER OF THE ARMED FORCES TO SERVING AS AN ASSOCIATE JUSTICE OF THE TEXAS SUPREME COURT. HE HAS AN IMPRESSIVE LIST OF CREDENTIALS AND HAS RECEIVED NUMEROUS AWARDS.

THERE IS NO DOUBT THAT JUDGE GARWOOD POSSESSES THE QUALIFICATIONS TO BE A UNITED STATES CIRCUIT JUDGE AND HIS SERVICE ON THE TEXAS SUPREME COURT AMPLY DEMONSTRATES THAT HE HAS THE DEDICATION, DEMEANOR, AND INTEGRITY WHICH SUCH A POSITION MANDATES.

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I AM SURE THAT AFTER THE HEARINGS ON THIS NOMINATION, THE MEMBERS OF THIS COMMITTEE WILL CONCUR WITH MY ASSESSMENT.

AS I REVIEWED JUDGE GARWOOD'S RECORD I WAS STRUCK BY HIS INSIGHTFUL ANALYSIS OF THE PROPER ROLE OF THE JUDICIARY --AN ANALYSIS THAT COULD ONLY HAVE EVOLVED FROM YEARS OF EXPERIENCE IN PRIVATE PRACTICE AND AS A MEMBER OF THE JUDICIARY. JUDGE GARWOOD CLEARLY UNDERSTANDS THE CONCEPTS OF "CASE AND CONTROVERSY", "JUDICIAL EXPANSIONISM", JUDICIAL REVIEW" AND THE COMPLEXITIES IN THE PHRASE "A GOVERNMENT OF LAWS AND NOT OF MEN".

I HAVE NO DOUBT THAT JUDGE GARWOOD WILL BE A SUPERB AND OUTSTANDING JURIST AND I HOPE THAT THE COMMITTEE WILL REPORT HIS NOMINATION FAVORABLY TO THE SENATE.

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PREPARED STATEMENT OF SENATOR LLOYD BENTSEN

MR. CHAIRMAN, I AM PLEASED TO HAVE THIS OPPORTUNITY TO EXPRESS MY SUPPORT FOR THE NOMINATION OF STATE REPRESENTATIVE JAMES R. NOWLIN TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS.

REPRESENTATIVE NOWLIN IS A NATIVE OF SAN ANTONIO, TEXAS, AND A GRADUATE OF TEXAS MILITARY INSTITUTE. HE EARNED HIS B.A. AND M.A. DEGREES FROM TRINITY UNIVERSITY. HE RECEIVED HIS J.D. DEGREE FROM THE UNIVERSITY OF TEXAS SCHOOL OF LAW IN AUSTIN, TEXAS.

HE BRINGS WITH HIM TO THE BENCH A DIVERSE BACKGROUND AND UNDERSTANDING OF PRIVATE PRACTICE AND PUBLIC SERVICE. HE HAS BEEN ENGAGED IN PRIVATE PRACTICE IN SAN ANTONIO AND IS PRESENTLY SERVING HIS SEVENTH TERM AS A MEMBER OF THE TEXAS HOUSE OF REPRESENTATIVES. HE HAS REPRESENTED HIS DISTRICT WITH DISTINCTION SERVING ON THE FOLLOWING COMMITTEES: EDUCATION, LABOR, MENTAL HEALTH AND MENTAL RETARDATION, FEDERAL RELATIONS, ELECTIONS, CONSTITUTIONAL AMENDMENTS, JUDICIARY, YOUTH, NATURAL RESOURCES, ENERGY RESOURCES, JUDICIAL AFFAIRS, AND LOCAL AND CONSENT CALENDARS. HE ALSO SERVED AS CHAIRMAN OF THE SPECIAL HOUSE INTERIM JOINT COMMITTEE ON ENERGY IN 1978. HE IS

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PRESENTLY SERVING AS CHAIRMAN OF THE LOCAL AND CONSENT CALENDARS COMMITTEE, AS BUDGET AND OVERSIGHT CHAIRMAN OF THE JUDICIARY COMMITTEE AND IS A MEMBER OF THE ENERGY RESOURCES COMMITTEE.

HE HAS SERVED OUR COUNTRY AS A MEMBER OF ITS ARMED FORCES AND HAS RECEIVED NUMEROUS AWARDS AND CITATIONS THROUGHOUT HIS LONG AND DISTINGUISHED CAREER.

MR. CHAIRMAN, I HAVE REVIEWED THE RECORD AND SUPPORTING DOCUMENTATION WITH RESPECT TO THIS NOMINATION AND I AM CONFIDENT THAT THIS COMMITTEE WILL ARRIVE AT THE SAME CONCLUSION AS I DID REGARDING REPRESENTATIVE NOWLIN. HIS EXPERIENCE AS AN ATTORNEY AND HIS DEDICATED PUBLIC SERVICE WILL ENABLE HIM TO SERVE AS A JUDGE WITH THAT BALANCE OF COMPASSION AND FIRMNESS THAT IS TO VERY IMPORTANT FOR MEMBERS OF OUR JUDICIARY. HE HAS INDICATED A WILLINGNESS TO INTERPRET RATHER THAN EXPAND THE INTENT OF THE LEGISLATURE AND HAS EXPRESSED HIS DEEP CONCERN FOR THE IMPLICATIONS AND RAMIFICATIONS OF THE WORDS: "EQUAL JUSTICE UNDER THE LAW".

MR. CHAIRMAN, REP. NOWLIN CERTAINLY MEETS THE HIGH STANDARDS WE DEMAND FOR OUR JUDICIAL OFFICERS AND I HOPE YOUR COMMITTEE WILL ACT FAVORABLY TO HIS NOMINATION.

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PREPARED STATEMENT OF SENATOR LLOYD BENTSEN

MR. CHAIRMAN, I AM PLEASED TO TAKE THIS OPPORTUNITY TO EXPRESS MY SUPPORT FOR THE NOMINATION OF HAYDEN W. HEAD, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS.

MR. HEAD IS A NATIVE OF SHERMAN, TEXAS, AND HAS BEEN ENGAGED IN PRIVATE PRACTICE IN CORPUS CHRISTI, TEXAS, SINCE 1968. HE RECEIVED HIS B.A. DEGREE FROM THE UNIVERSITY OF TEXAS IN 1966 AND HIS LL.B. IN 1968 FROM THE UNIVERSITY OF TEXAS SCHOOL OF LAW.

HE BRINGS WITH HIM TO THE BENCH A DISTINGUISHED LEGAL CAREER. HE IS A MEMBER OF THE AMERICAN AND TEXAS BAR ASSOCIATIONS. HE HAS SERVED ON THE GRIEVANCE COMMITTEE, ENVIRONMENTAL LAW COMMITTEE AND THE COMMITTEE FOR LEGAL SERVICES TO THE POOR WHILE A MEMBER OF THE TEXAS BAR. HE IS THE PRESENT CHAIRMAN OF THE CORPUS CHRISTI DIVISION -- GRIEVANCE AND ADMISSIONS COMMITTEE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. HE IS A FELLOW OF THE TEXAS BAR FOUNDATION AND AN ACTIVE MEMBER OF THE NUECES COUNTY BAR ASSOCIATION.

HE HAS SERVED OUR COUNTRY AS A MEMBER OF THE ARMED

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FORCES AND IS AN ACTIVE PARTICIPANT IN CIVIC AND COMMUNITY AFFAIRS.

MR. HEAD RECOGNIZES THE ROLE OF THE JUDICIARY IN ADJUDICATING THE LEGAL RIGHTS AND OBLIGATIONS OF THE LITIGANTS BEFORE IT AND DEMONSTRATES COMPLETE UNDERSTANDING OF THE AUTHORITY AND BOUNDARIES OF THE CONSTITUTION OF THE UNITED STATES. I AM SURE THE MEMBERS OF THIS COMMITTEE WILL BE AS IMPRESSED AS I WAS WITH HIS UNDERSTANDING OF THE CONCEPT OF JUDICIAL RESTRAINT. MR. HEAD EXCEEDS THE STANDARDS OF INTEGRITY AND QUALIFICATIONS THAT WE HAVE COME TO EXPECT OF THE MEMBERS OF OUR JUDICIARY AND I AM CONFIDENT THAT HE WILL BECOME AN OUTSTANDING JUDGE.

I HOPE THIS COMMITTEE WILL REPORT HIS NOMINATION TO THE FULL SENATE WITH A FAVORABLE RECOMMENDATION.

Senator GRASSLEY. For my own part as a member of this committee and a Senator from the State of Iowa, and also for the entire committee, I want to congratulate each one of you on your nomination. We are going to expedite it, as the chairman of the committee previously said when he came in for short remarks to all of you.

We congratulate you and know that you will do a good job. Thank you all very much.

The committee meeting is ended.

[Whereupon, at 2:15 p.m., the hearing was recessed, subject to the call of the Chair.]

BIOGRAPHIES

WILLIAM L. GARWOOD

NOMINEE, U.S. CIRCUIT JUDGE, FIFTH CIRCUIT

Birth: October 29, 1931, Houston, Tex.
Legal residence: Texas.

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Marital status: Married to Merle C. Haffler Garwood, 2 children.
Education: 1948–52—Princeton University, A.B. degree; 1952–55—University of Texas School of Law, LL.B. degree.
Bar: 1955—Texas.
Military service: 1956–59—U.S. Army.
Experience: 1955–56—Law Clerk, Hon. John R. Brown, U.S. Court of Appeals, Fifth Circuit; 1959–79—Graves, Dougherty, Hearon, Moody & Garwood, associate (1959–61), partner (1961–79); 1979–80—Associate Justice, Supreme Court of Texas, Austin, Tex.; 1981 to present—Graves, Dougherty, Hearon, Moody & Garwood, partner.
Office: 2300 Austin National Bank Tower, Austin, Tex., 512–478–6421.
Home: 3408 Timberwood Circle, Austin, Tex. 78703, 512–453–8527.

Hayden Wilson Head, Jr.

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF TEXAS

Born: November 12, 1944, Sherman, Tex.
Legal residence: Texas.
Marital status: Married to Barbara J. Lewis Head, 2 children.
Education: 1962–64—Washington & Lee University; 1964–65; 1965–68—University of Texas; Univ. of Texas Law School, B.A. degree 1966, LL.B. degree 1968.
Bar: 1968—Texas.
Military service: 1969–72—United States Navy, Judge Advocate General's Corps.
Experience: 1968–69—Head & Kendrick, associate; 1972–76—Head & Kendrick, associate; 1976 to present—Head, Kendrick & Head, partner.
Office: 1020 Bank & Trust Tower, Corpus Christi, Tex. 78477, 512–883–5465.
Home: 314 Chenoweth, Corpus Christi, Tex. 78404, 512–884–3187.

James R. Nowlin

NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF TEXAS

Birth: November 21, 1937, San Antonio, Tex.
Legal residence: Texas.
Marital status: Divorced.
Education: 1955–59—Trinity University, B.A. degree; 1959–62 (part-time)—Trinity University, M.A. degree; 1960–63—University of Texas at Austin, School of Law, J.D. degree.
Bar: 1963—Texas.
Military service: October 1959 to April 1960—U.S. Army.
Experience: 1963–65; 1966–72—Kelso, Locke & King; associate; 1965—Committee on Labor & Public Welfare, U.S. Senate, associate legal counsel; 1966–71; 1973 to present—Texas State Legislature, House of Representatives, member; 1972 to present—Private practice, San Antonio and Austin, Tex.
Office: 8918 Tesoro Drive, Suite 545, San Antonio, Tex. 78217, 512–824–3371; State Capitol Building, G–14, P.O. Box 2910, Austin, Tex. 78769, 512–475–5869. Littlefield Building, Suite 530, 106 East 7th Street, Austin, Tex. 78701, 512–474–8334.
Home: James R. Nowlin, 254 Tuxedo Avenue, San Antonio, Tex. 78209, 512–926–4974.

H. Franklin Waters

NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF ARKANSAS

Birth: July 20, 1932, Hackett, Ark.
Legal residence: Arkansas.
Marital status: Married to Janie C. Murphy Waters, 3 children.
Education: 1950–55—University of Arkansas, B.S. degree; 1959–64—St. Louis University School of Law, LL.B. degree.
Bar: 1964—Missouri; 1966—Arkansas.
Military service: 1955–58—U.S. Navy, Lt. J.G.
Experience: 1964–66—Ralston Purina Company, St. Louis, Mo., attorney; 1966 to present—Blair, Cypert, Waters & Roy, associate (1966–67); partner (1967 to present).
Office: 111 Holcomb, Springdale, Ark. 72764, 501–751–5222.
Home: Route 3, Box 408A, Springdale, Ark. 72764, 501–248–1381.

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CONFIRMATION HEARING ON: RICHARD J. CARDAMONE, ROBERT D. POTTER, AND PAUL A. MAGNUSON

THURSDAY, OCTOBER 22, 1981

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2 p.m., in room 5110, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Present: Senators Thurmond and East.

Also present: Senators D'Amato, Helms, Durenberger, and Boschwitz; and Representative Mitchell.

Staff present: Vinton DeVane Lide, chief counsel; Duke Short, chief investigator; and Pamela Swanner, clerk.

The CHAIRMAN. The committee will come to order.

We are pleased today to have before the committee Justice Richard J. Cardamone of New York, who has been nominated for the position of circuit judge for the Second Circuit Court of Appeals; Mr. Robert D. Potter of North Carolina, who has been nominated to be U.S. district judge for the Western District of North Carolina; and Mr. Paul A. Magnuson of Minnesota, who has been nominated to be U.S. district judge for the District of Minnesota.

We are glad to have you gentlemen here.

Before calling up the appointees, we would like to give an opportunity to the Senators. They are all so busy with different matters.

NOMINATION OF RICHARD J. CARDAMONE

I believe we have first Senator D'Amato and Congressman Donald Mitchell of New York. Would you gentlemen come forward?

STATEMENT OF HON. ALPHONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Mr. Chairman, it is a great privilege to be here today, first of all to be before the distinguished chairman of the Judiciary Committee, a great gentleman and colleague in the Senate, our pro tempore leader, and someone who cares about the judicial process and system and, I might say, who adds the kind of diligence as chairman of the Judiciary Committee that brings great credit to the selection process.

I am most pleased today, Mr. Chairman, to present to you and this committee New York's distinguished appellate division justice, Justice Richard Cardamone.

Judge Cardamone is a graduate of Harvard College and Syracuse University Law School, a school that I have also been privileged to attend and to graduate from, but not nearly with the great and impressive academic background and record of accomplishment that Justice Cardamone has achieved.

He was a partner in the very distinguished law firm of Lewis, Kehoe & Cardamone until 1963, when he was first appointed as a trial justice of the New York State Supreme Court.

Then the following November, he went on to be elected for a full 14-year term as a trial justice in the Supreme Court Fifth Judicial District of New York. He served in that capacity until 1971, when he was appointed to the appellate division, a position which he now holds, which is the second highest position in the State of New York.

Since that time, he has served as acting presiding judge of the appellate division and on several occasions has served on specially convened courts regarding judicial misconduct. He is an active member of the New York State Association of Supreme Court Justices and has held a number of offices, including president and chairman of the executive committee.

He is married to the former Catherine Baker Clarke, and he is the father of 10 children.

Mr. Chairman, Judge Cardamone is highly qualified; but more than that, he is a dedicated family man, a man of integrity, and a man of experienced judicial background both as a practicing attorney and as a sitting jurist. I am confident that he will serve the needs of our great country on the Second Circuit Court of Appeals with the same kind of distinction that he has served in his previous positions. I am delighted to be here to pay testimony to his selection and presentment to this committee.

The CHAIRMAN. Thank you very much, Senator.

The fact that you are here endorsing Justice Cardamone so highly of course will carry great weight with this committee and this chairman, as you well know.

I believe we also have Congressman Donald Mitchell.

Are you here to speak for this particular nominee or someone else?

Mr. MITCHELL. I am here to speak for Judge Cardamone.

The CHAIRMAN. All right, Congressman. We will be glad to hear from you.

STATEMENT OF HON. DONALD J. MITCHELL, A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK

Mr. MITCHELL. Thank you, Mr. Chairman. I greatly appreciate this opportunity to testify on an appointment of this nature. This particular honor has never been accorded to anyone in the northern district of New York, which represents 3 million people and 32 counties, and so it is a very special day for me.

I would like to submit a lengthy statement for the record, Mr. Chairman, and make some brief comments.

The CHAIRMAN. Without objection, we will insert your entire statement in the record.

Mr. MITCHELL. It is a great pleasure to endorse the appointment of the Honorable Richard Cardamone to the U.S. Circuit Court of Appeals. Judge Cardamone is a good friend. He is also an outstanding citizen of the congressional district I am privileged to represent, and he is a highly respected member of the legal community of New York State.

As you know, he is presently the senior associate justice for the appellate division of the New York State Supreme Court. He has amassed a distinguished record of achievement on the bench and also through his service on the New York State Commission on Judicial Conduct as well as chairman of the executive committee of the New York State Associate and Supreme Court Justices. In my estimation, he has demonstrated his worthiness for this appointment.

In addition to this brilliant record of achievement, he has always demonstrated great integrity, diligence, and determination in carrying out the responsibilities of any job assigned to him.

In my congressional district and, in fact, in people I have met throughout the Nation, I know of no finer man for this job nor a more qualified individual for this high appointment. I endorse his candidacy wholeheartedly, and I would urge his favorable consideration by this distinguished committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

[The prepared statement of Congressman Mitchell follows:]

STATEMENT OF CONGRESSMAN DONALD J. MITCHELL (31st, NEW YORK)

ON

CONFIRMATION OF THE APPOINTMENT OF RICHARD J. CARDAMONE

TO

UNITED STATES COURT OF APPEALS

SENATE JUDICIARY COMMITTEE OCTOBER 22, 1981

Mr. Chairman, Members of the Committee: It gives me great personal pleasure to endorse the appointment of the Honorable Richard J. Cardamone to the U.S. Court of Appeals. He is a long-time friend, an active citizen of my Congressional District, and a respected member of the legal community in the State of New York.

Presently, a Senior Associate Justice for the Appellate Division of the New York State Supreme Court for the Fourth Judicial Department, Judge Cardamone has a distinguished record of achievement on the bench and as a member of the bar. A graduate of Harvard College and the Syracuse University School of Law, Richard Cardamone practiced law for ten years before being appointed as Justice of the Supreme Court of the State of New York in 1963. He was elected to a 14-year term as Supreme Court Justice in November of that same year.

In 1971, Judge Cardamone was designated to a temporary vacancy on the Appellate Division of the State Supreme Court. Three years later, in 1974, he was designated to a permanent seat on the Appellate Division. In 1977, Judge Cardamone was re-elected to another 14-year term as a Supreme Court Justice. At that time he received the endorsement of the Republican, Conservative, Democratic and Liberal Parties.

In January of 1979, he became a Senior Associate Justice of the Appellate Division. In 1980, he served as Acting Presiding Justice of the Appellate Division of

the Fourth Department, by appointment of the Chief Judge of the Court of Appeals.

In October of 1980, he was designated as an Associate Judge of the Court of Appeals of New York for the reargument and determination of the appeal in the case of the People v. Warner-Lambert, Co.

In addition to his distinguished service on the bench, Judge Cardamone has been an asset to the judiciary of New York State through his service on the New York State Commission on Judicial Conduct, as a member of the Executive Committee of the State Association of Supreme Court Justices, as President of that Association from 1977 to 1978, and as Chairman of the Executive Committee.

Beyond his professional contributions, Judge Cardamone has amply demonstrated his concern and commitment to his community by serving as a Trustee of the St. Luke's Memorial Hospital Center and as Director of the Slocum-Dickson Foundation.

Although this impressive list of professional and civic accomplishments speaks for itself, I would like to add my own personal testimony to Richard Cardamone's character and ability. In the many years I have known him, he has always demonstrated the highest level of integrity, diligence and determination in the effective administration of justice. His personal and professional lives have always been conducted according to his own high standards of morality and excellence.

I know of no finer, more qualified individual, for the position of United States Court of Appeals Justice. I endorse his appointment wholeheartedly and hope the Committee will confirm his appointment to this important post.

The CHAIRMAN. Judge, we are delighted to have you with us. In order to hear all these Senators so they can get back, we would ask you just to have a seat back there for a few minutes until we hear from the other Senators.

Judge CARDAMONE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator D'Amato. With the good record this particular man has, I think you will be well pleased with the action of the Judiciary Committee.

Senator D'AMATO. Thank you, Mr. Chairman.

NOMINATION OF ROBERT D. POTTER

The CHAIRMAN. Now we have Mr. Robert D. Potter of North Carolina who is nominated to be a U.S. district judge for the western district of North Carolina.

Senator Helms is here; and Senator East, a member of the committee, of course is here. Would you gentlemen come around?

I might state before we hear from you that I have a letter here from Helen Galen. I presume she is a member of Senator Moynihan's staff. Without objection, this will be placed in the record. It expresses approval of Justice Cardamone.

[The letter referred to above follows:]

U.S. SENATE,
Washington, D.C., October 22, 1981

HON. STROM THURMOND,
U.S. Senate,
Washington, D,C.

DEAR MR. CHAIRMAN: Senator Moynihan is necessarily absent because of his amendment to the Foreign Assistance Bill and other matters on the Senate floor. He has asked me to convey his apologies to the Committee and to Judge Richard J. Cardamone whom he was to introduce to the Committee this afternoon.

Needless to say, Senator Moynihan supports the nomination of Judge Cardamone fully and is confident that the Committee will tender him every proper consideration. He is recommended without reservation.

Very truly yours,

HELEN GALEN.

The CHAIRMAN. Senator Helms, you may proceed.

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator HELMS. Mr. Chairman, I deeply appreciate the honor and privilege to appear before this distinguished committee.

It is an honor to present my longtime friend, Robert D. Potter, whom President Reagan has nominated as U.S. district judge for the western district of North Carolina.

As I have indicated, Mr. Chairman, I have known Bob Potter for many years and in my judgment President Reagan is doing this country, and particularly the western district of North Carolina, a great service by having nominated him as a Federal judge.

Bob Potter's unique and impressive qualifications are well known to the members of this committee. He is a native of North Carolina. He was graduated from Duke University and the Duke University School of Law. He served his country in the Army as an officer in the infantry. For the past 30 years he has practiced law in Charlotte, N.C.

His professional credentials make him eminently qualified for a seat on the Federal bench. He has practiced before every level of North Carolina's courts, including the magistrate's court, district court, superior court, the North Carolina Court of Appeals, and the North Carolina Supreme Court. He has also practiced before the North Carolina Utilities Commission.

He has had extensive experience in practice before the Federal courts as well, having appeared in Federal Bankruptcy Court, Federal District Court, and on appeal before the Federal Circuit Court of Appeals; and he is a member of the bar of the U.S. Supreme Court.

In the light of this extensive legal experience, I can recommend Bob Potter to this distinguished committee as a man who possesses the professional qualifications necessary to serve on the Federal bench.

Aside from those professional credentials, Mr. Chairman, Bob Potter possesses the personal characteristics I believe this committee is seeking in nominees to the Federal bench. He is a solid citizen, a man of the highest ethical and moral standards; and I know him to be devoted to his God, his family, and his country.

Over the years, Bob Potter has given freely of his time to worthy causes. He has served as a member of the executive committee of the 26th Judicial District Bar Association, as a member of the Mecklenburg County Civil Service Board, and as a member of the board of directors of Mercy Hospital, Inc. These are just a few. He has actively supported political candidates, in whom he has believed, including, among others, Ronald Reagan; and he is also a great admirer of the distinguished chairman of this committee, as is this Senator from North Carolina.

But probably the wisest and most fortunate move Bob Potter ever made was when he persuaded Kathleen Neison Potter to be his bride. She is here, and I would like the privilege of asking her to stand and be recognized.

The CHAIRMAN. We are very pleased to have her stand, if she will.

Mrs. Potter, would you stand up? Thank you very much.

Senator HELMS. Also, Mr. Chairman, he has a fine son, Bob, Jr., who is a lieutenant in the Navy. He is here; and I would like for him to stand, if he will.

The CHAIRMAN. We would be glad for him to stand.

Do you have any other children here that you would like to stand up?

Mr. POTTER. No, sir.

The CHAIRMAN. He is the only one, then. We are glad to have them here.

Senator HELMS. I believe Bob, Jr., is a graduate of the U.S. Naval Academy.

Mr. POTTER. That is correct.

Senator HELMS. Mr. Chairman, I am going to ask unanimous consent that the balance of my statement be printed in the record of this committee as if read.

Let me conclude by saying that I have known Bob Potter for so long that I could go on and on, like Tennyson's brook, in reciting why I am convinced that he will make a splendid Federal judge.

Therefore, it is my privilege to present this fine American, whose ability and dedication have been recognized by the President of the United States and, in fact, by all who know him.

[The prepared statement of Senator Helms follows:]

INTRODUCTION OF BOB POTTER

Mr. HELMS: Thank you, Mr. Chairman and members of the Committee. It is an honor to present to this distinguished Committee my longtime friend, Robert D. Potter, whom President Reagan has nominated as U.S. District Judge for the Western District of North Carolina.

As I say, Mr. Chairman, I have known Bob Potter for many years, and in my judgment, President Reagan is doing this country, particularly the Western District of North Carolina, a great service by nominating him as a federal judge.

Bob Potter's unique and impressive qualifications are well known to the members of this panel. He is a native of North Carolina. He was graduated from Duke University and the Duke University Law School. He served his country in the Army as an officer in the Infantry. For the past thirty years he has practiced law in Charlotte, North Carolina.

Bob Potter's professional credentials make him eminently qualified for a seat on the federal bench. He has practiced before every level of North Carolina's courts, including the Magistrate's Court, District Court, Superior Court, the North Carolina Court of Appeals, and the North Carolina Supreme Court. He has also practiced before the North Carolina Utilities Commission.

He has had extensive experience in practice before the federal courts, having appeared in Federal Bankruptcy Court, Federal District Court, and on appeal before the Federal Circuit Court of Appeals. He is a member of the Bar of the United States Supreme Court.

In light of this extensive legal experience, I can recommend Bob Potter to this panel as a man who possesses the professional qualifications necessary to serve on the federal bench.

Aside from his professional credentials, Mr. Chairman, Bob Potter possesses the personal characteristics I believe this Committee is seeking in nominees to the federal bench. He is a solid citizen -- a man of the highest ethical and moral standards. I know him to be devoted to his God, his family, and his country.

Over the years, Bob Potter has given freely of his time to worthy causes. He has served as a member of the Executive Committee of the 26th Judicial District Bar Association, as a member of the Mecklenburg County Civil Service Board, and as a member of the Board of Directors of Mercy Hospital, Inc. He has actively supported political candidates he believes in, including among others, Ronald Reagan.

Probably the wisest and most fortunate move he ever made was when he persuaded Kathleen Neilson (Potter) to be his bride. He and Mrs. Potter have three fine children: Bob, Jr., who is a graduate of the United States Naval Academy; Mary, who has just entered her first year of law school at Campbell University School of Law; and Catherine, who is a twelfth grader at Charlotte Country Day School.

Mr. Chairman, I have known Bob Potter for so long that I could go on and on like Tennyson's Brook in reciting why I am convinced he will make a splendid federal judge. But let me sum up by saying this: Bob Potter is a fine American. He is a man of bedrock principles. He is dedicated. He is courageous. And he is an indefatigable worker.

Therefore, it is my privilege to present a fine American whose ability and dedication have been recognized by the President of the United States, and in fact by all who know him. On behalf of the President, it is my honor to present the Honorable Robert D. Potter, and in so doing, I extend to him my best wishes for a successful new career.

Senator HELMS. I thank you.

The CHAIRMAN. Without objection, the balance of your statement will be placed in the record just prior to your concluding remarks.

Senator HELMS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Helms, we are pleased to have you with us. Are you going to stay while Senator East talks, or leave now?

Senator HELMS. Inasmuch as I have got to call up an amendment cosponsored by the distinguished chairman of this committee, I expect that I had better leave shortly.

The CHAIRMAN. I just want to tell Mr. Potter, while you are here, that he has two very able, strong, and influential Senators representing North Carolina.

Their endorsement of you, of course, means everything to your appointment.

Mr. POTTER. Thank you, sir.

The CHAIRMAN. Senator East, we would be glad to hear from you.

STATEMENT OF HON. JOHN P. EAST, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EAST. Mr. Chairman, I appreciate the opportunity to be a part of this fine occasion. I could not improve upon the eloquence of my distinguished colleague, Senator Helms.

I would like to say that, by my presence here, I am in full agreement with him on the qualities of this man in terms of personal character, in terms of integrity in the legal profession, and in terms of the kind of confidence that we have in his abilities to serve on the court.

Having the great honor of serving on the Judiciary Committee with you in your distinguished leadership, I am as convinced as I could be that Mr. Potter is the kind of man that I know you will be honored to have on the Federal bench. So, by my presence here, I wish to be associated with this very impressive event. We are very honored to have this man willing to undertake this very important job.

The CHAIRMAN. Thank you very much.

Senator East is a member of the Judiciary Committee, Mr. Potter, and I am sure he will cast his vote for you and you will have no trouble being approved here.

Senator EAST. That is one we can count on.

The CHAIRMAN. It is a pleasure to have you, Senator Helms and Senator East, endorse Mr. Potter.

Mr. Potter, would you have a seat back there, and we will take some other Senators?

Mr. POTTER. Thank you, Mr. Chairman.

NOMINATION OF PAUL A. MAGNUSON

The CHAIRMAN. Would the Senators from Minnesota please come up and endorse Mr. Paul A. Magnuson to be U.S. district judge for the district of Minnesota?

We are pleased to have Mr. Magnuson here with his two able Senators from Minnesota.

It is customary to hear from the senior Senator first, and then we will hear from the junior Senator.

Senator DURENBERGER. Mr. Chairman, I appreciate this opportunity. Both the Senators from Minnesota have been admitted to the practice of law, but my junior colleague rarely admits to that fact, so I am going to permit him to go first, and for reasons that may become clear later, I will take the second position.

Thank you.

The CHAIRMAN. Senator Boschwitz, we are pleased to have you.

STATEMENT OF HON. RUDY BOSCHWITZ, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator BOSCHWITZ. Mr. Chairman, I do not want to correct my senior colleague, but I am not admitted in Minnesota, although I was admitted in other States. In Minnesota I just became a businessman.

In any case, Mr. Chairman, it is a pleasure to be here before you today in support of Paul Magnuson to be Federal district court judge for the district of Minnesota. He is a most distinguished member of the Minnesota bar who has indeed been a long-time friend. We have been active in some activities together during our time in Minnesota.

Mr. Chairman, although a native of South Dakota, he went to college and has practiced law in Minnesota. He is a partner in the firm of Levander, Gillin, Miller & Magnuson, the senior partner of which is Harold Levander, formerly Governor of the State of Minnesota.

He has been active in more public-spirited ventures than I could mention; it fills a long list. He has a fine family of five children. He has a wonderful reputation in Minnesota and our surrounding States. Mr. Chairman, Paul Magnuson will bring great credit to the Federal bench in Minnesota, just as he has brought credit to himself and his family through all of his activities during his entire life.

Thank you.

The CHAIRMAN. We will be very pleased now, Senator, to hear from you.

STATEMENT OF HON. DAVID F. DURENBERGER, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Thank you very much, Mr. Chairman. I consider it a privilege to have the opportunity to be here today and, for the first time in my tenure in the Senate, to have the opportunity to present a candidate to a Republican Senator on the Judiciary Committee. I appreciate that a great deal.

But my purpose in associating myself with this President's good judgment in this case is hardly partisan. When we came here, we made the decision that we would use a form of commission selection process in our State. With a Democratic President, we think it did a very good job; and now with a Republican President, we think it did even a better job, if that is possible, in presenting to you, from among a wide variety of Minnesotans who were interested in this position, Mr. Paul Magnuson.

I have known Paul Magnuson for about 18 or 19 years now as a very close personal friend—probably one of my closest—and for about 2 or 3 of those years as an associate. That law firm that

Rudy referred to used to be known as Levander, Gillin, Miller & Durenberger.

In the early days of my practice and Paul's association with the firm, we were at the bottom of a five- or six-person firm, and we decided it would be a good idea that the deadwood leave the top of the firm; and so we engaged in encouraging Mr. Levander to run for public office, which he did; and he became a fine Governor of the State of Minnesota.

I thought I would stay behind and reap the benefits of that judicious use of my political wisdom, but I did not; I was trapped into serving with him for 4 years as his executive secretary and, in effect, left the opportunity that that particular law firm would have given me for continued public service.

To expand on the notion that Rudy suggested—that a nominee for the bench is more than just a good lawyer—you know from your own experience, Mr. Chairman, that we do not look just at a person's credentials as a lawyer to determine their credentials to sit behind the bar. We in Minnesota have been terribly proud of the fact that our nominees have come to this position, not just out of the law practice but out of a very strong commitment to public service.

This particular little law firm of ours has sometimes been characterized as a political law firm, because one of the first success stories out of that firm was a fellow by the name of Harold Stassen, whom I am sure you know well and probably still know well. Democratic congressmen have come out of that firm; U.S. district attorneys have come out of that firm; a supreme court justice at the State level in Minnesota came out of that firm.

This only gives me the opportunity to say, Mr. Chairman, that there is a uniqueness about the practice of law that commits the individual to public service. In this particular nominee, I am proud to say, as I have said to the President and I say to you, that the commitment that this person brings to public service in the broadest sense will bring to his service as a Federal district judge that same kind of commitment to service to humanity and the role that the bar has to play and the bench particularly has to play in that role.

For that reason and all of the other reasons that Rudy has stated, I am particularly proud to associate myself now, and I will be even prouder in the future to associate myself, with Paul Magnuson as a Federal district judge.

I thank you for your time.

The CHAIRMAN. Thank you very much, Senator.

I would just say to Mr. Magnuson, with two able and fine Senators having recommended and endorsed you here today, you should have no trouble getting through the committee.

If you will have a seat back there, we will excuse the Senators if they wish to leave, and then we will ask the first nominee to come forward—Justice Richard Cardamone.

Would you stand up and be sworn? Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge CARDAMONE. I do.

The CHAIRMAN. Please be seated.

Do you have any family here you would like to introduce?

TESTIMONY OF JUDGE RICHARD J. CARDAMONE, NOMINEE, CIRCUIT JUDGE, SECOND CIRCUIT COURT OF APPEALS

Judge CARDAMONE. Thank you, Mr. Chairman.

I have my wife—Catherine—of 35 years here.

The CHAIRMAN. Good afternoon, Mrs. Cardamone. We are glad to have you with us.

Judge CARDAMONE. I would not be here myself without having had Catherine as my wife for 35 years, Mr. Chairman.

The CHAIRMAN. Do you have any children here today?

Judge CARDAMONE. None of my children, but my son-in-law married to my daughter Mary, Jeff Saunders, a young lawyer in New York State who has practiced here in Washington for 4 years, and also without whose help I do not believe I would be before this honorable body.

I have one other young friend here—his friend and mine, Bill Bierbower, who practices law here in Washington, D.C.

The CHAIRMAN. We are glad to have them with us.

As I understand, you are the father of 10 children?

Judge CARDAMONE. That is right, Mr. Chairman.

The CHAIRMAN. That is quite a record in itself.

We have down here that you are a New York State Supreme Court justice. As I understand, the supreme court in New York is a trial court, is it not?

Judge CARDAMONE. That is correct.

The CHAIRMAN. Is that not the highest trial court?

Judge CARDAMONE. It is the highest trial court.

The CHAIRMAN. I was in Albany, N.Y., when I first went in the Army in the spring of 1942. I appeared in behalf of some soldiers in court there. That was my recollection. In our State, the supreme court is the appellate court—the highest court.

Judge CARDAMONE. There is a division of the trial court that is called the appellate division of the State Supreme Court. It is the intermediate appellate court in New York, and that is the court that I serve on. I serve on it as an Appellate Division justice of the New York State Supreme Court. The highest court in New York State is the court of appeals. That is in Albany. Then there is the appellate division of the supreme court.

The CHAIRMAN. That is the intermediate court between the supreme court and the court of appeals?

Judge CARDAMONE. Exactly, Mr. Chairman.

The CHAIRMAN. I see.

Judge CARDAMONE. That is the court I presently serve on.

The CHAIRMAN. In 1972, while serving in your present position as a justice with the appellate division of the New York Supreme Court, you were quoted in a news article as saying,

> What we must do is review cases to guarantee that there has been no error which would be prejudicial or violating of one's rights. It is not the hardest case that takes the most time nor the smallest issue decided soon. Human rights issues often take longer because almost every case is different.

Justice Cardamone, having served approximately 10 years in the appellate court, do you still share these views?

Judge CARDAMONE. Yes. I think that whatever rights are accorded to individuals who appear in court by statute should be accorded them, but I do not think that the courts should reach out and extend the rights and make new rights where none exist.

The CHAIRMAN. Justice Cardamone, you are presently serving as a member of the New York State Commission on Judicial Conduct charged primarily with reviewing complaints against members of the New York judiciary, I believe.

Judge CARDAMONE. That is correct.

The CHAIRMAN. With this background, do you feel that procedures should be established whereby Federal judges can be reviewed as to their demeanor, good behavior, and standards of conduct, after they are confirmed by the Senate?

Judge CARDAMONE. Yes, Mr. Chairman. I think judges nowadays should be accountable for their conduct toward litigants and even the attorneys that appear in their courts.

The CHAIRMAN. In May of this year "The Washington Post" reported that the Court of Appeals for the State of New York struck down the conviction of a man who sold films involving naked children performing sexual acts. The films were sold to an undercover New York City policeman. The Post article is quoted as saying:

> To be deemed illegal, the court said, in effect, child pornography must be declared obscene by community standards. Depicting naked children, even engaging in sexual acts, does not necessarily make a movie obscene.

I am greatly concerned over the increased use of young children in pornographic and sexually exploitive material, and as chairman of the Judiciary Committee I have instructed the chief investigator of the committee to thoroughly examine this subject. It is my present intention to hold hearings on the subject of child pornography at a date in the near future.

Justice Cardamone, would you give me your views on the laws relating to child pornography?

Judge CARDAMONE. Mr. Chairman, I share your concern with that subject. As you noted a moment ago, I am the father myself of 10 children. I certainly deplore any exploitation of children in child pornography.

I did not serve on the court of appeals; I am not a member of it. If I were a member of it, I do not think I would have been voting with the majority, but I would have been voting with the dissenting opinion in that case with which I am familiar.

The CHAIRMAN. Can you imagine someone making the statement that depicting naked children, even engaging in sexual acts, does not necessarily make the movie obscene?

Judge CARDAMONE. It was a deplorable decision, I am afraid. On the other hand, it was the decision of the highest court of our State, but one for which I had no responsibility, Mr. Chairman.

The CHAIRMAN. I believe your record shows you served in the Navy for 3 years during World War II.

Judge CARDAMONE. That is correct.

The CHAIRMAN. And you practiced law for a number of years before you went on the bench.

Judge CARDAMONE. That is correct also.

The CHAIRMAN. Have you ever been charged with any crime?

Judge CARDAMONE. No, sir.

The CHAIRMAN. I think that covers my questions. I believe an investigation of you has been completed, and nothing unfavorable has been found.

We hope you enjoy your service on the bench. This committee will probably act on the nomination early next week.

Judge CARDAMONE. May I take this opportunity, Mr. Chairman, to tell you how deeply honored and thankful I am to appear before this body and you? Thank you very much.

The CHAIRMAN. It has been a pleasure having you here. Good luck to you.

Judge CARDAMONE. Thank you, sir.

The CHAIRMAN. Our next nominee is Mr. Robert Potter from North Carolina.

Mr. Potter, would you come around?

TESTIMONY OF ROBERT D. POTTER, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF NORTH CAROLINA

Mr. POTTER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Potter, I believe you were born in Wilmington, not far from the South Carolina line. So that is a point in your favor to start with.

Mr. POTTER. Fifty or sixty miles, I guess.

The CHAIRMAN. You are living in Charlotte now?

Mr. POTTER. That is true. And that is only 10 miles from South Carolina, so I am getting closer.

The CHAIRMAN. Mr. Potter, I understand that the majority of your legal experience has been civil in nature with limited trial experience. Do you feel that your lack of criminal and trial experience will in any way affect your performing the duties of a Federal judge?

Mr. POTTER. No, sir. As far as that goes, I have covered the waterfront—everything from prosecuting the docket as the solicitor in our municipal and county courts right on up through all types of civil actions. I have not been constantly in court, but I have represented corporations, and naturally we are in litigation a good bit of the time. I have been in EEOC cases; I have been in pollution cases; I have been in about everything you could be in, then on up through registration—full stock registration—with the Securities and Exchange Commission; I have been before the Internal Revenue Service, Appellate Division. Being a sole practitioner, I have had to do about everything, Senator.

The CHAIRMAN. Mr. Potter, what do you perceive to be some of the major demands and pressures of being a Federal judge; and how would you attempt to resolve them?

Mr. POTTER. Major demands, I suppose, are being able to dispose of a voluminous number of cases which are coming before the Federal courts now, at the same time giving everybody a fair hearing. That to me is a difficult job which I hope that I will be able to do.

The CHAIRMAN. Mr. Potter, are there any guidelines that you think a judge should follow in determining the propriety of Federal judicial intervention into State affairs?

Mr. POTTER. Well, sir, I have always been one who feels that the Federal Government—we are a republic, first of all. I think people lose sight of that fact—that the United States was conceived as a republic and that the States should be able to run their affairs with as little interference as possible from the Legislative, the Executive, and the Judicial branches of the U.S. Government. At the same time of course, the Federal courts do have to supervise or pass on constitutionality of some State actions.

The CHAIRMAN. Mr. Potter, what are your views on the laws relating to child pornography?

Mr. POTTER. Mr. Chairman, pornography of any kind, whether it is men, women, or children, to me is one of the most distasteful things that has been fostered in this country. I would include in that also the drug addictions which have come up. I do not know whether this has come from the Vietnam war or what it has come from, but it is a terrible thing which is going on, and I hope that we can correct it somehow or other.

The CHAIRMAN. I am a great believer in the Constitution as written, and I think over the years some decisions have been written that tend to warp the Constitution. I would hope that the judges who are appointed would adhere to the verbiage of the Constitution and try to interpret what our forefathers meant. I feel the Constitution says what it means and means what it says.

Mr. POTTER. I agree with you.

The CHAIRMAN. But these strange interpretations that have been made in some decisions are very difficult to understand. I hope you feel that this sacred document, which is the embodiment of our form of government, can be and will be adhered to during your term as a judge.

Mr. POTTER. Yes, sir; it is my intention to do that—uphold the Constitution, as you say, as it is written, and not as somebody might think it should be written.

The CHAIRMAN. I do not think we have any other questions now. We wish you success and happiness in your term on the Federal bench.

Mr. POTTER. Thank you, sir.

Mr. Chairman, I have just remembered that I was not sworn at the beginning of this testimony. Is that necessary, or is that a technicality?

The CHAIRMAN. I had better swear you now. Do you swear that the evidence you give in this hearing is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. POTTER. Yes, sir.

The CHAIRMAN. And that applies to what you have already said too.

Mr. POTTER. Yes, sir.

The CHAIRMAN. We will excuse you now, Mr. Potter.

Mr. POTTER. Thank you very much.

The CHAIRMAN. Mr. Magnuson, would you come forward?

TESTIMONY OF PAUL A. MAGNUSON, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF MINNESOTA

Mr. MAGNUSON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Magnuson, do you have any family members here you would like to introduce?

Mr. MAGNUSON. No, I do not have any family members here. My wife and children are unable to attend today. However, I was very pleasantly surprised in coming to this hearing today and seeing two very dear friends and clients, Mr. and Mrs. Tony Pillo of West St. Paul, Minn.

The CHAIRMAN. Please stand up, if you will. We are pleased to have you here.

Now I will swear you, if you will stand. Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MAGNUSON. I do.

The CHAIRMAN. Mr. Magnuson, I believe you were born in South Dakota. Is that right?

Mr. MAGNUSON. That is correct, Senator.

The CHAIRMAN. When did you move to Minnesota?

Mr. MAGNUSON. I left South Dakota really upon termination of high school to attend college in St. Peter, Minn. That in turn led me to law school in St. Paul. My residency terminated sometime in that plain of time, and legally the fact is that I have really been gone from South Dakota since high school days.

The CHAIRMAN. Mr. Magnuson, do you believe litigants in State courts receive the same level of fairness, due process, and quality of justice as do litigants in Federal courts?

Mr. MAGNUSON. My experience, Mr. Chairman, with respect to this would be limited to the State of Minnesota. The answer, in my opinion, in Minnesota is yes—that I strongly feel there is a place for the Federal courts but there is also a place for the State courts and the absolute jurisdiction that should be placed in the State courts to perform the State court functions.

As it relates to the item of fairness, we are very fortunate in Minnesota to have an excellent State bench. Litigants do receive fair trials in our State.

There are certain procedural aspects that may be preferable in the Federal system. I am procedurally very happy to be aspiring to the Federal system because of certain internal procedural processes that I think are beneficial for knowledge to the court with respect to the information that is being presented.

The CHAIRMAN. Mr. Magnuson, I guess you have tried a large number of cases of course in the State and the Federal courts.

Mr. MAGNUSON. That is correct.

The CHAIRMAN. What in your opinion is needed to speed up the disposition of Federal cases? Do you think we need more judges or judges need to work longer hours? Do you think more magistrates or do we need to change the criminal procedures? What can we do to speed up the process?

There is a lot of complaint about people committing a crime and then it takes so long to bring them to trial. In the meantime, if they are not out on bond, the public has to care for those people in prison. If they are out on bond under the bail laws now, some of them commit crimes again and again. If we can speed up the disposition of these cases, it will assist, I think, our criminal procedures.

Mr. MAGNUSON. Senator, with respect to this particular question, I think I would give you a two-fold answer. The first is to tell you that I, from the observations I have made in Minnesota, want to tell you that the speedy trial law has worked very well in the Federal courts in the State of Minnesota. I believe it is a beneficial thing.

In addition to this, with respect to speedy trials—and quite frankly I speak here primarily to civil litigation, where I see the greatest problem currently existing in our State and before the district bench of Minnesota—first and foremost, in this day and age we are living in a very litigious society with which I am rather displeased and would hope that as a sociological matter society would start to work very hard at finding ways to resolve their grievances other than through the final arbitrations of the courts.

Second: I would say that for the court itself the one solution to the court's problems is time on the bench—time receiving testimony, having the jury hear the cases—because they do take time, and that time must be allocated.

Therefore, the use of magistrates, the use of court personnel, and the use of support personnel must be maximized to the absolute degree that that can be done in order to, again, give the judges the time on the bench taking the testimony that permits the resolution of the particular grievance that is before it.

The CHAIRMAN. Mr. Magnuson, I believe you informed the committee that you do not believe it is the duty of a trial judge to make the law but rather to interpret the existing law as it is applied to the facts presented at trial. Would you amplify those remarks as they pertain to judicial activism?

Mr. MAGNUSON. Yes, Senator; one of the great problems that has been before our courts over recent years, and I think a situation that must be tempered, is the tendency upon the trial courts to enter into, if you will, the severe social problems of the day without giving the due deference to the other two branches of Government.

It is my firm opinion that the trial judge—as I aspire to be a trial judge—has one basic, fundamental responsibility; and that is to take the proliferation of law that we have today and apply it to the particular factual matter that is before the court, to permit the jury to make their decisions based upon the facts that are presented in the court.

It is not the responsibility of the trial court to reach out, if you will, to the concept that might be in the back of the court's mind as to what he would think the law might or should be in the future. That is not my responsibility or the responsibility of a trial court.

We have legislative bodies; we have a Supreme Court. To them they can and should carry that responsibility, and I think that the trial court has enough responsibility acting within its scope of responsibility.

The CHAIRMAN. Mr. Magnuson, would you also give us your views on the laws relating to child pornography?

Mr. MAGNUSON. Senator, the very subject is repugnant to my most inner being. I do not have the familiarity of the particular case to which you referred earlier in discussions with Judge Cardamone. I can only echo his comments. I cannot conceive of the

factual situation which you related and find that such conduct does not violate the standards of a community. I can only tell this committee that the entire subject of pornography, particularly the subject of child pornography, should not and must not be permitted to continue to proliferate through this land.

The CHAIRMAN. Is there anything else you would like to state to us?

Mr. MAGNUSON. Senator, may I just take briefly this opportunity to sincerely thank you and to sincerely thank this committee for the opportunity of appearing here before you today? I particularly also wish to thank the President for the high honor of the nomination which he has bestowed on me. I would further comment to say thank you to Senators Durenberger and Boschwitz for the complimentary and fine comments they have presented here today.

May I particularly reciprocate to Senator Durenberger our long association, our long and dear friendship, and to only pledge to him, to you, and to this committee that I will do my utmost to uphold the confidences that he has placed in me?

Thank you.

The CHAIRMAN. We wish you happiness and great service to your country after you have been confirmed. You are now excused.

Now we have two witnesses here from New York, I believe—Mr. Thomas Murphy and Mr. Gene Crescenzi.

Would you please come forward?

I had better swear you in. Would you both stand? Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CRESCENZI. I do.

Mr. MURPHY. I do.

The CHAIRMAN. Now, state your name and address.

STATEMENT OF GENE CRESCENZI, NEW YORK, N.Y.

Mr. CRESCENZI. I am Gene Crescenzi, 415 Lexington Avenue, New York, New York 10017. I am a practicing attorney, publisher, and journalist.

OPPOSING JUDGE CARDAMONE

In my experience as an active practitioner in New York for 27 years, I have come to this committee hearing with a view to opposing the confirmation at this time of Judge Cardamone for the reasons that I will set forth here.

SECRET PROTECTED CORRUPTION IN SECOND CIRCUIT

On July 14, 1981, in conference with Mr. Scardilli, staff counsel to the second circuit, in the presence of an assistant, I was advised that my attempts to apply the law in litigation in the second circuit were doomed to failure.

In the words of Mr. Scardilli:

> The judges in the Second Circuit considered me as waving a gun, which no judge would allow me to aim or pull the trigger; that my appearance before any judges would be met with reprisals of fines, grievances, disbarment proceedings, and other harassments.

All of this has unhappily come to pass, and as recently as August 18, 1981, Judge Sofaer (SDNY), in a unilateral procedure responsive to the admonitions of Mr. Scardilli, took abusive and illegal action against me in a summary order of remand in the *Carey* v. *Carey* case, 81-7613.

When I later learned of the adverse action and appeared before Judge Sofaer to explain that he had been used in a fraudulent proceeding by my adversary Arthur Wisehart and I offered to produce witnesses relating to the perjury and illegal conduct that had taken place, he called for the marshals to order my arrest if I did not comply with his illegal order.

During my many years of practice, I have become aware of the use of secret court procedures in lieu of public trials which have resulted in denial of due process for myself, and my clients, and have made ineffective my services as an attorney, not through any lack of my efforts but through a conspiracy to obstruct justice, as described by Mr. Scardilli.

My inquiries into the judicial abuse under color of law have disclosed a pattern of protected corruption.

In my recent experiences, the procedure of protected corruption operates through links in and with a military intelligence network that is operated through the psychiatric and medical professions, the board of education, and numerous prestigious law firms with Wall Street and Park Avenue addresses and bar association connections who supervise and control judicial procedures.

The net result of the Carey matter and the Anna Stanton Green matter has been the effective stealing, under color of law, of moneys rightfully due to the parties. In similar matters—Plotkin and LeVine—it is stealing of real property—whole neighborhoods—blockbusting—by police kidnapping of lawful owners.

JUDGE CARDAMONE AS FORMER GAULEITER

It is useful to make reference to the book "Der Richter Im Dritten Reich" by Hubert Schorn, a book written in the German language, which translated means "The Judge In The Third Reich," published in 1959, which describes the Third Reich Nazi procedures to control Germany through infiltration of the judiciary, the same procedures which I have observed in the practice of the law for almost 27 years in the United States. To say that this is an underground government is an understatement.

I have voluminous documentation and personal experience in support of the abuses of the judicial process, all of which I will happily make available to this committee.

This judge is a former county executive leader in the Republican Party, "gauleiter" in German. "Gau" means "district," and "leiter" means "leader"—district leader. This was the instrumentality of Nazi infiltration.

It is his party hack role that most visibly ties him to the corrupt "old boy" and intelligence network running the second circuit court of appeals, turning the courthouse into a clubhouse.

Senator D'Amato has appointed him and may be the subject of Department of Justice action relating to suggested illegal conduct

in connection with the prosecution of another Republican county leader, Margiotta.

INTELLIGENCE OLD-BOY NETWORK

This powerful network now includes ex-Judge Mulligan of Fordham and Judges Mansfield and Lumbard of Donovan and Leisure—intelligence law firm fixers—Moore, former U.S. attorney in Brooklyn; and Sweet of intelligence bar association connections.

They are tied to the psychiatric and mental health procedures through William J. Casey, Director, Central Intelligence, who recently was honored by the Fordham Law School together with Judge Francis Murphy of the Appellate Division, First Department, of the State of New York.

Other Fordham "old boy" machine threads visibly include Judge Irving Kaufman—the first one—and now Judge Pierce.

My clients have likewise been victimized by Judge Sweet, former deputy mayor, who refused to disqualify himself when requested, based upon his friendship and close association with my adversary, Robert Blum, who together manipulated perjured psychiatric testimony to steal $125,000 of Mrs. Green's money under color of law and to physically kidnap her to another manipulated court in Westchester County under the direction of Eliot Bartholomew, an intelligence officer and conservator of Mrs. Green, who stole her money through the abuse and corruption of Judge Sweet.

That, intermixed with all of these procedures, is surreptitious and other contacts that operate through the local police department.

Unless an indepth inquiry is made into the procedures and direct and indirect contacts leading to the nomination of Judge Cardamone, there will remain a heavy cloud upon his quiescent or active participation in the protected corruption of the second circuit.

The crying need is to enforce the Constitution and the laws thereunder, now totally unenforceable through total abdication of Federal judicial authority over State and local machine-run courts.

Without a full investigation into this, Judge Cardamone is ill-equipped and as a junior judge will certainly be subordinated to the existing control. This is all the more true because his nomination is tainted by the conflict of interest through Senator D'Amato's Margiotta ties.

CORRUPT CONTROL OF COURTS BY COUP D'ETAT SCIENCE OF PSYCHIATRY

A further essential subject of inquiry is this machine's ties to the lucrative, corrupt control of our courts through the pseudomedical jailkeepers' American Psychiatric Association through its pretentious charlatanry.

It is necessary to recall that Judge Mansfield and the late Judge Gurfein were influential elements in wartime OSS intelligence and psychological warfare. The late Judge Gurfein was an influential element of the Nuremburg war trials. William Donovan, the founder of the OSS, likewise stated in a current biography: "I will use psychological warfare against the enemy."

The facts of the anatomy of Hitler's Third Reich judiciary takeover were certainly known to Mansfield, Gurfein, Lumbard, and other judges of the second circuit.

In my view, it is only too clear that they did their homework. Judge Mansfield moreover was head of the intelligence retiree's chapter, in which circle Eliot Bartholomew no doubt circulated. Psychological warfare, premised on psychiatry, now replaces the rule of law in our courts.

What psychiatry meant was well known in central Europe—it was created in Prussia in the mid-19th century—fake learning to disguise long established arbitrary, secret police practices there, a tool of baronial domination. Bismark's "Greater German Reich" first elevated it to the coup d'etat science, which no doubt explains CIA and big-law firm-owned judges' fond attachment to it.

The result now—a refeudalization of America and reversion to Dred Scott law—can be remedied only here in Washington, which remedy I therefore urge the committee to effect.

I have also attached to my statement, which I will submit in total for the committee record, extracts of the title page of "The Judge In The Third Reich" with a photostatic copy of the table of contents together with a translation of the more relevant chapters which relate to the intelligence takeover and political takeover of the court system then, in Germany in the Third Reich, and now, in the second circuit court of appeals.

Thank you.

[Material referred to above is on file with the committee.]

The CHAIRMAN. Thank you, Mr. Crescenzi.

Mr. Murphy?

STATEMENT OF THOMAS MURPHY, NEW YORK, N.Y.

JUDGE CARDAMONE'S BACKGROUND

Mr. MURPHY. Mr. Chairman and Senator East, thank you for hearing me today in connection with the President's appointment of Judge Cardamone to the Second Circuit Court of Appeals—to one of four vacancies on that court.

Congratulations to Judge Cardamone on his appointment, and I look forward to your confirmation of him if you find him fit.

He has an interesting record of service. A U.S. Supreme Court citation of his dissent in *The People* v. *Donaway,* agreeing with Judge Cardamone that arrest without proper cause is false arrest, suggests that he has a fair sense of the Constitution, that the ends in a dispute do not justify the means for him, so that law rather than prejudice prevails.

Judge Cardamone will, if confirmed, be filling either the vacancy created by the death of Judge Murray Gurfein in December 1979 or that created by the resignation of Judge William——

The CHAIRMAN. Mr. Murphy?

Mr. MURPHY. Yes, Mr. Chairman?

The CHAIRMAN. I was thinking that we could put your entire statement in the record. Would you want to just give us a little résumé of it briefly? We will put your entire statement in the record.

WITNESS' INTEREST IN TESTIFYING

Mr. MURPHY. OK. Let me just precis that for you, Senator, to save you time.

I have two motivations in being here today. They are to attempt to bring to your attention a history of obstruction of justice in the second circuit to support two kinds of fraud. One is fraud, for example, in municipal employment; another is fraud in the theft of estates and the theft of people's reputations and their jobs through the use of psychiatry.

Within the second circuit's jurisdiction—and this is also Mr. Crescenzi's very issue—I would like to point out to you, Senator, that the second circuit is the only jurisdiction in our country that I know of where psychiatry is absolutely used by numerous of the judges on the court—judges who are reported by the New York Times to be very powerful so that, I believe, the judges of the Supreme Court stand in awe of them to deny human rights under color of law.

CONTRAST BETWEEN NINTH AND SECOND CIRCUIT COURT'S PSYCHIATRIC RULINGS

In the ninth circuit in California, for example—and I do not want to have to be a refugee there, Senator, so I can get my rights out there——

The CHAIRMAN. Mr. Murphy——

Mr. MURPHY. Yes, Senator? Yes, Senator?

The CHAIRMAN. You are talking too loud. The reporter cannot hear what you are saying.

Mr. MURPHY. Senator, let me be even more frank with you. I regret that you asked me to summarize when I was only 2 minutes into my statement. I have 5 minutes, as you said; and the 3 minutes that I would have used had I read along in my statement would have recounted to you publicly here a practice by Senator D'Amato, I believe, of trying to get judges onto this second circuit to protect him so that in case he is indicted for an extortion scheme which he has been proven to be involved in, those judges, out of gratitude to him and out of their own personal proclivity to, so to speak, cover their behinds rather than do justice, will attempt to get him off the hook.

LIKELIHOOD THAT D'AMATO'S CANDIDATES WILL CONTINUE SECOND CIRCUIT PSYCHIATRIC ABUSE

I think it is a disgraceful situation in the second circuit, Senator; and I have great anger because this has touched me personally even to the point of the death of my wife, I feel, from psychiatric terror imposed by the second circuit on teachers who exercise their duty in the work place—those judges obstruction of justice, I mean.

REQUEST THAT THE SENATE DEVELOP LEGISLATION TO END ABUSE OF PSYCHIATRY BY COURT

I urge you, Senator, to look into it. It is all in my testimony. You have it all. I urge you, Senator, to read it carefully. Have each

member of your committee read it and develop legislation, Senator, to see to it that no judge in any circuit in this country is able to use psychiatry in the way in which these vicious judges in the second circuit have used it.

I urge you to develop legislation to extirpate psychiatry altogether from the justice system by declaring it not, in fact, a branch of medicine, since it is based only on the psychiatrist's own allegation. He needs to do no X-ray, no blood test, nothing that anybody is going to objectify. In short, it is character assassination disguised as medicine. I urge you, Senator, to review it, to develop a record of legislation, and drive these damned lying doctors out of the justice system. That way, I will be protected and others after me will be protected. The second circuit's proclivity to obstruction of justice will no longer obtain.

REQUEST FOR INCLUSION OF PRECIS OF TESTIMONY IN RECORD OF HEARING

Thank you for permitting me to precis my remarks, Senator.

The CHAIRMAN. All right. I believe that completes the witnesses for the hearing on these three judges. We will probably have them on the agenda next week for consideration by the committee.

Mr. MURPHY. Senator, may I know if my exact remarks will go into the minutes as they were given here as well as my formal remarks in the transcript? May I know if my exact statement here today will go into the minutes of this committee meeting as well as my formal transcript?

The CHAIRMAN. Yes; your statement will go in the record.

Mr. MURPHY. The statement here and the transcript of the statement which you have already?

The CHAIRMAN. Yes.

Mr. MURPHY. Thanks. I am glad that both are going in—what I said here and what I gave to you on paper. Thanks so much, Senator, for hearing me today.

Mr. CRESCENZI. Senator, may I make the same request—that my statement be placed in total in the record?

The CHAIRMAN. It will go into the committee files.

Mr. CRESCENZI. Thank you, Mr. Chairman.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF THOMAS MURPHY

My testimony regarding Judge Cardamone is as follows:

Thank you, Senator(s) for hearing me today in connection with the President's appointment, for your confirmation, of Judge Richard Cardamone of the New York State Supreme Court, Appellate Division, Fourth Department, to one of four vacancies on the United States Court of Appeals for the Second Circuit. Congratulations to Judge Cardamone on his appointment. I look forward to your confirmation of Judge Cardamone's appointment for life to the Second Circuit Court of Appeals in the event that you find him fit. Judge Cardamone has a fine record of service.

The U.S. Supreme Court's citation of his dissent in *The People* v. *Dunaway*, agreeing with Judge Cardamone that arrest without proper cause is false arrest suggests that he has a fine sense of the Constitution; that the ends, so to speak, don't justify the means, so that law rather than prejudice prevails.

Judge Cardamone will, if confirmed, be filling either the vacancy created by the death of Judge Murray Gurfein in December, 1979, or that created by the resignation of Judge William Mulligan in 1981.

Recently, Judge Mulligan was interviewed by Dan Rather of CBS News on one of three consecutive evening news reports on the Federal Judiciary. Judge Mulligan

described the Judiciary as a "priesthood" (metaphorically, of course) and had resigned for financial reasons—to provide an income for his wife in the event of his death.

Parenthetically, I do urge you, Senators, to develop legislation to increase judges' survivors benefits so that the Second Circuit Court lose no other judges for Judge Mulligan's reason for resigning, if you haven't seen to it already, for resignation tends to paint the jurdiciary as just another job rather than a lifetime vocation. And, of course, there are always those who claim that a resigned judge had planned all along to use the prestige of the Federal judiciary as a mere stepping stone in advancing a lucrative career after resignation.

Continuing Judge Mulligan's metaphor, he has, unfortunately, apparently due to financial pressure, become a "lasped priest," so to speak, and forsaken his vocation.

For Judge Gurfein, on the other hand, the Federal Judiciary turned out to be a life-long vocation indeed.

On the matter of Judge Cardamone's financial capacity to continue appointment for life, it must be noted that he has ten children, many of them young, according to his statement in the New York Times of October 1, 1981.

Therefore, unless he has large financial resources from the time before 1962 when then Governor Rockefeller appointed him to the State Court'—for his judge's salary must be difficult to enable provision for the rearing of a large family, and he cannot have legally earned outside income while on the bench—his capacity to continue on the Federal bench must be in at least as much doubt as that of Judge Mulligan has been shown to be financially impossible according to Judge Mulligan himself.

Therefore, I request that the Judiciary Committee thoroughly investigate Judge Cardamone's financial situation and determine independently whether, it is likely that he will be able, unlike Judge Mulligan to seriously accept a lifetime appointment with the requisite commitment.

As to hard information on Judge Cardamone's specific position on issues of great seriousness and urgency peculiar and particular to the Second Circuit Court, I am at a disadvantage in speaking to you today, due to an apparent change in the reporting practice of the New York Times regarding the Federal Judiciary—since its initial report in May of New York Senator Alfonse D'Amato's recommendation of Judge Edward Neaher of the U.S. Southern Eastern District Court of New York, then acting on the Second Circuit Court of Appeals, for permanent appointment by the President. In fact, Judge Neaher, had he been appointed and confirmed and ruled on a particular case involving Senator D'Amato's participation in an extortion scheme by his patron, Joseph Margiotta, Nassau County, N.Y. Republican Party chairman, would have been in direct conflict of interest since Neaher had been a member of the Nassau County Republican Committee and probably party to the scheme before moving on to the U.S. Attorney's office and later the federal judiciary. Margiotta will soon be retried in Eastern District Court regarding a parallel scheme. I was able to nip Neaher's permanent appointment in the bud, I believe, by timely protest to the President, giving as evidence Judge Neaher's participation in a pattern of obstruction of justice within the Second Circuit Court and its attendant Eastern and Southern Districts, involving the litigation which I have in the Southern District and Second Circuit Court and many other's similar actions—all this after Senator D'Amato had ignored my request that he withdraw his recommendation of Neaher. The President did, however, reject Neaher. I supplied the New York Times' federal Judiciary reporter, Mr. Arnold Lubasch, and his editor, with all papers submitted both to D'Amato and the President. The Times' subsequent reporting of appointments only, not recommendations, is anomalous, at least.

Subsequently, however, the New York Times reported only the President's appointment of Judge Lawrence Pierce of the U.S. Southern District Court of New York and Judge Cardamone and I have since learned that they are also on D'Amato's recommendations but any opposition I might now have to present to you is against Presidential appointees and so my opportunity to bring matters to the President's attention before appointment for confirmation has been lost. Though my intention, as late as September 29th, was not to oppose Judge Pierce, he has since shown, a lack of a judicial sense of the fitness of things by ruling, shortly after D'Amato recommended him to the President and the President appointed him unopposed by me for want of awareness that the recommendation had been made, on the very court matter in which D'Amato was involved, the effect of which is to save D'Amato from testifying against Margiotta and perhaps implicating himself, thereby, I believe, presenting the appearance of possible conflict of interest, and rendering Pierce, as I shall testify in detail when his time for confirmation by you comes, unfit for appointment to the Second Circuit Court of Appeals on which he now sits, like Neaher, in an acting capacity and like Neaher, recommended by D'Amato, as is Judge Cardamone, who, like Margiotta, according to the New York

Times of October 1, 1981 was, before appointment to State Court, Republican County chairman—of Oneida County, and, no doubt, well acquanited with Margiotta within that context, in the state Republican political hierarchy—and Judge Cardamone will sit on the Court which will review the decision in Margiotta's November 1981 re-trial in connection with the above parallel scheme, if the decision is appealed or if a review of a ruling on appeal is requested enbanc—that is, by the entire court.

In The New York Times of October 1st, Judge Cardamone is quoted as saying. "I really don't consider myself a political person anymore. I consider myself a judge." But man is, a political animal, and Judge Cardamone's patron is D'Amato whose patron is Margiotta and Judge Cardomone no doubt knows Margiotta well. Is he capable of the virtually heroic detachment requisite to reviewing the Margiotta affair as a Second Circuit judge? Do question him thoroughly on this matter, Senator(s), and then decide for yourselves whether the atmosphere of the Second Circuit Court might not be stale with the endlessly circulating relationships between Republican politics, Republican graft and old political friends, some as judges, others as defendants, all perhaps; presenting the appearance of massive conflict of interest with Senator D'Amato packing a Federal Court of Appeals with four appointees to provide a haven for him and his associates from justice itself. Even the appearance of that is sufficient for you to require judges with backgrounds clearly removed from that taint—and Judge Cardamone has ten children, as well.

My disadvantage regarding information on Judge Cardamone's position on issues of particular urgency in the Second Circuit Court due to the peculiar character and history of certain judges on that Court so powerful and influential that the U.S. Supreme Court's justices may stand in awe of them—has not prevented me from writing him to have his statement. He received my query on October 13th, and your Mr. Short has a copy of my letter of October 8th to Judge Cardamone, as well as my correspondence of May 19th to the President regarding Neaher, D'Amato and Margiotta, copy to Chairman Thurmond, and my intended testimony of September 29th on Judge Pierce's appointment, now sadly, to be revised to opposition due again to the taint of D'Amato and Margiotta. Secure it all from Mr. Short, Senators, and read it.

I implore you, so that you might, as I suggested to the President on May 17th, be those legislators who ". . . cleansed the Argean Stable' which the above judges [Gurfein—deceased—Mulligan and Mansfield and others] have made of their courts by your diversion of a river of judicial integrity to the Second Circuit by the character and Quality of those whom you appoint with that courage required to turn the tide of justice against special interests such as those of Alfonse D'Amato."

Meanwhile, kindly defer further consideration of Judge Cardamone for confirmation for Judge of the U.S. Court of Appeals for the Second Circuit until he has responded satisfactorily to mine to him of October 8th, copy to chairman Thurmond and kindly begin at once to develop legislation jointly with the House of Representatives' Judiciary committee to extirpate from the justice system altogether that abuse described in the affidavit attached to my letter to Judge Cardamone. Thank you for your attention. I am, Thomas Murphy, of New York City."

The CHAIRMAN. The hearing will stand in recess, subject to the call of the Chair.

[Whereupon, at 3:05 p.m., the hearing was recessed, subject to the call of the Chair.]

BIOGRAPHIES

RICHARD J. CARDAMONE

NOMINEE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Birth: October 10, 1925, Utica, N.Y.
Legal residence: New York.
Marital status: Married to Catherine Clarke Cardamone, 10 children.
Education: 1943-44—Union College, U.S. Navy Program; 1945—Cornell University, U.S. Navy Program. 1945 (Navy Program); 1946-47; summer 1948; fall 1949—Harvard College, B.A. degree (1950). 1950-52—Syracuse Unversity Law School, LL.B. degree.
Bar: 1952—New York State.
Military service: 1943-46--U.S. Navy, honorable discharge.

Experience: 1952-53—Rudd, Penberthy & Nelson, staff attorney; 1953-57—partner with Sheldon Judson, Utica, N.Y.; 1957-63—Ferris, Kehoe, Cardamone, Murnane & Garramone, partner; 1963 to present—New York State Supreme Court justice.

Office: Oneida County Courthouse, Utica, N.Y. 13501, 315-798-5877

Home: 101 Winship New Hartford, N.Y. 13413, 315-733-7380

ROBERT D. POTTER

NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF NORTH CAROLINA

Birth: April 4, 1923, Wilmington, N.C.

Legal residence: North Carolina.

Marital status: Married to Mary Catherine Neilson Potter, 3 children.

Education: 1940-43, 1947—Duke University, A.B. degree; 1947-50—Duke University Law School, LL.B. degree.

Bar: 1951—North Carolina.

Military service: 1944-47—U.S. Army, honorable discharge.

Experience: 1950—Western Electric Company purchase service clerk; 1951-52—private practice, Charlotte, N.C.; 1952-57—practice of law with Ervin Boyle, Charlotte, N.C.; 1957 to present—private practice, Charlotte, N.C.; 1966-68—Mecklenburg County Commissioner, Charlotte, N.C.; Charlotte, N.C.; (elected)

Office: 450 Northwestern Building, Charlotte, N.C. 28202, 704-334-2071

Home: 2710 Coltsgate Road Charlotte, N.C. 28210, 704-366-5127.

PAUL A. MAGNUSON

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF MINNESOTA

Birth: February 9, 1937, Carthage, S. Dak.

Legal residence: Minnesota.

Marital status: Married to Sharon M. Magnuson, 5 children.

Education: 1955-59—Gustavus Adolphus College, B.A. degree; 1959-63—William Mitchell College of Law, J.D. degree.

Bar: 1963—Minnesota.

Experience: 1962-63—Bertie & Bettenberg, law clerk; 1963 to present—LeVander, Gillen, Miller & Magnuson, Associate (1963-1967), partner (1967 to present).

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